GENERAL DIGEST

OF THE

CIVIL RULINGS AND DECISIONS OF HER MAJESTY'S PRIVY COUNCIL AND OF THE HIGH COURTS IN INDIA

PART VI.

LAW OF EVIDENCE.

FROM 1862 *TO* 1876.

FOR THE USE OF THE BENCH THE BAR AND THE PUBLIC.

COMPILED ARRANGED AND PUBLISHED

BY

GANPUTRAO HARI KHANDEKAR

POONA.

REGISTERED UNDER ACT XXV of 1867.

POONA PRINTED AT THE "LAW PRINTING HOUSE."

INDEX.

P.

Q.

R.

'LANATION OF THE CONTRACTIONS USED.

A. J.	for	Appellate Jurisdiction.
App.	for	Appendix.
Art.	for	Article.
B. H. R.	for	Bombay High Court Reports.
B. L. R.	for	Bengal Law Reports.
C. C. P.	for	Code of Civil Procedure.
Ch.	for	Chapter.
C. J.	for	Chief Justice.
Cl.	for	Clause.
F. B.	for	Full Bench.
J.	for	Justice.
L. R. I. A.	for	Law Reports Indian Appeal.
M. H. R.	for	Madras High Court Reports.
M. I. A.	for	Moore's Indian Appeal.
Mis. A.	for	Miscellaneous Appeal.
N. W. P.	for	North Western Provinces High Court Reports
O. J.	for	Original Jurisdiction.
P. C.	for	Privy Council.
Reg.	for	Regulation.
S.	for	Section.
S. N.	for	Special Number.
S. V.	for	Supplemental Volume.
W. R.	for	Weekly Reporter.

There may be a few others but they will be easily understood.

G. H. K.

A

GENERAL DIGEST

OF THE

CIVIL RULINGS AND DECISIONS OF HER 'S
PRIVY COUNCIL AND OF THE HIGH COURTS
IN INDIA.

LAW OF EVIDENCE.

A

1. Held on a consideration of the Indian Evidence Act I of 1872 114 that the Legislature intended to lay down as a *maxim* or rule of evidence that the testimony of an accomplice is unworthy of credit, so far as it implicates an accused person, unless it is corroborated in material particulars in respect to that person; and it is the duty of a Court which has to deal with an accomplices testimony to consider whether this *maxim* applies to exclude that testimony or not, and in a case tried by jury, to draw the attention of the jury to the principles relative to the reception of an accomplice's testimony. 21 W. R. [illegible]

It is unnecessary to prove by independent evidence the correctness every single item of an account extending over 7 years, in the absence of any denial of the correctness of any one of those items. W. R. S. N.

3. In a suit for a sum of money on an unadjusted account, filed a memorandum (A) with her plaint, from which the amount in the plaint could not be made out. In her examination by the Court, the plaintiff put in another memorandum (C) to explain memorandum (A). Defendant admitted that memorandum (C) was signed by him. It had reference to a period immediately preceding that for which the suit was brought. Held that memorandum (C) was rather evidence to support the

* See Criminal part of my 75.

originally stated cause of action, than an amendment of the claim or the of one claim or cause of action for another. The case was one which should have been decided not merely on the discrepancy between the two statements made by plaintiff, but on the whole of the evidence.

The mere omission of an accountable party, framing his own account to carry forward into a new account a balance against himself existing in a former one, can constitute no evidence in his own favor. To prove the existence of the balance, such omission might be considered in conjunction with other evidence in the cause. 14 W. R. P. C. 24.

4. In a suit for an account of moneys received and disbursed by defendant while employed as a *mohurir* in plaintiff's shop, and for sums which defendant might be found to have misappropriated, defendant objected that one D (a relative of plaintiff's), who had been jointly employed with him as manager, with equal powers and responsibilities, ought to have been sued together with him:

Held that, to release D on payment of a trifling sum, and to sue defendant alone for a large amount (as plaintiff had done), no accounts being taken between them, was most inequitable, and the suit have been dismissed.

that as plaintiff had filed his *khotta-books* in Court and did not allege that they had been falsified, he should have balanced the account himself, and the Lower Court should not have deputed an *Ameen* under Act VIII of 1859, S. 181, to investigate the accounts.

Held that such investigation does not include or allow the taking of the depositions of witnesses; and such depositions are not legally sible as evidence in the cause. 19 W. R. 14.

5. Account books are oral evidence to corroborate oral testimony.

6. The Sudder Audalut Court of Bombay having, on the hearing of a cause, permitted an account-current to be proved by the entries in the plaintiff's *duftars* or account-books, and decreed the defendant to pay the balance upon that evidence, unsupported by oral testimony, and notwithstanding the denial of any sum being due by the defendant in his answers; held by the Judicial Committee that under such circumstances the books of account of the plaintiff cannot be used singly as evidence against the defendant, and that the decrees founded thereon must be 1 M. I. A. 47.

ACCOUNT-BOOKS (Of Adversary).

7. An adversary's account-books may be used as corroborative evidence, not as independent testimony. 13 W. R. 294.

8. Where goods are consigned to be disposed of in a foreign mar-

ket, it is an implied term of the agreement by the consignor that the account-sales furnished by the correspondents abroad shall be taken as *prima facie* evidence of what the goods realised ?

Held, that this was so even though the consignor objected to the correctness of the account-sales when furnished to him. 6 B. H. R. O.

ACCOUNT (Unstamped

9. A signed account showing a balance up to date, and containing a promise to pay interest upon the consolidated balance cannot be made use of in evidence to support a claim to interest on that balance, it be stamped; but it may be used as a *Sumadusket* or simple of a balance due, although not stamped. 1 B. H. R. 47.

ACKNOWLEDGMENT (of Consideration-money.)

10. A document which acknowledges the receipt of consideration-money for the conveyance of immovable property cannot be received as evidence unless it is registered. 22 W. R. 309.

ACKNOWLEDGMENT (Of Debt).

11. Where there is an acknowledgment in writing of a debt due, parol evidence is admissible in order to show to what debt the acknowledgment related. 12 W. R. O. J. 2.

12. The draft of an acknowledgment of a debt and agreement to pay the same, which was sworn to have been drawn up in the presence of the debtor, but was not signed by him, admitted as evidence of the debt, and a decree made in the Courts below upon such evidence, affirmed with
1 M. I. A. 461 ; 5 W. R. P. C. 59.

ACKNOWLEDGMENT (Of Payment).

13. Although, when a deed of sale containing an acknowledgment of payment is written, payment is not made, it may become an acknowledgment afterwards, *i. e.*, when the deed is handed over. 19 W. R. 149.

ACQUIESCENCE.

14. The fact of a reversioner being an attesting witness to a conveyance by a Hindow widow, is an acquiescence on his part which him from impeaching the sale on the ground of waste. 6

15. Plaintiff, a member of an undivided Hindu family, sued to recover a parcel of land which he alleged his uncle, 1st defendant to have wrongly transferred to the 2nd defendant. The 2nd defendant alleged a sale to him by the first defendant, and a subsequent sale to the third defendant, and that the plaintiff had no title. The district Munsif gave judgment for the plaintiff. Upon appeal the Principal Sadar Amin, finding that the plaintiff knew of the sale, and treating the knowl as evidence of acquiescence in the original contracting, reversed decision of the Munsif : Held, (reversing the decision of the Sadar Amin) that mere knowledge would not make the plaintiff a party

ACT I OF 1872, S. 11.

16. Section 11 of the Indian Evidence Act should not in its widest signification, but considered as limited in its effect by S. of the Act. So construed, S. 11 renders inadmissible the evidence of one crime (not reduced to legal certainty by a conviction) to prove the existence of another unconnected crime, even though it be cognate. Accordingly, the possession by an accused person of a number of documents suspected to be forged is no evidence to prove that he has forged the particular document, with the forgery of which he is charged.

Per West J:—Where a person charges another with having forged a promissory note, and denies having ever executed any promissory note at all, the evidence that a note, similar to the one alleged to be forged, was, in fact, executed by that person, is not admissible, nor even would a judgment, founded upon such note, be so. 11 B. H. R. 90.

ACT I OF 1872, S. 13.

17. The right mentioned in the Evidence Act S. 13 is not a public

I OF 1872, S. 27.

Under S. 27 of the Indian Evidence Act not every statement by a person accused of any offence while in the custody of a police officer, connected with the production or finding of property, is admissible. Those statements only which lead immediately to the discovery of property, and, in so far as they do lead to such discovery, are properly admissible. Whatever be the nature of the fact discovered, that fact must, in all cases, be itself relevant to the case, and the connection between it and the statements made must have been such that that statement constituted the information through which the discovery was made, in order to render the statement admissible. Other statements connected with the one thus made evidence, and thus medintely, but not necessarily or directly, connected with the fact discovered, are not admissible. 11 B. H. R. 242.

The statement of a Police Officer who goes about from place to place, and collects information from different persons, which he afterwards puts in second hand before the Court, cannot be received as evidence under the Evidence Act I of 1872, S. 32, cl. 8. The meaning of that clause is that, when a number of persons assemble together to give vent to one common statement, which statement expresses the feelings or impressions made in their mind at the time of making it, that statement may be repeated by the witnesses, and is evidence. 23 W. R. 35.

I OF 1872, S.

ction 33 of the Evidence Act does not apply to the deposition

a subsequent suit in which he is a defendant, not as evidence between the parties, but as an admission against himself. 21 W. R. 414.

ACT I OF 1872, S. 34.

21. Though not alone sufficient to charge any one with ments admissible as evidence under Act I of 1872 S. 34 were held to be sufficient to answer a claim set up to exemption from what would be the ordinary liability, of a tenant; *e. g.* in a suit for enhancement of rent, to rebut a presumption arising from uniform payment for 20 years. 22 W.

ACT I OF 1872, SS. 76 and 77.

22. SS. 76 and 77 of the Evidence Act refer to public documents, and are inapplicable to *kobalahs*, &c. 22 W. R. 355.

ACT I OF 1872, S.

23. Section 119 of the Code of Criminal Procedure not making it obligatory upon a Police officer to reduce to writing any statements made to him during an investigation, neither that section, nor S. 91 of the Indian Evidence Act, renders oral evidence of such statements inadmissible. If the statements be actually reduced to writing, the writing itself cannot be treated as part of the record or used as evidence, but may be used for the purpose of refreshing memory under S. 159 of the Evidence Act. Consequently the person making the statements may properly be questioned about them, and, with a view to impeach his credit, the Police officer himself, or any other person in whose hearing the statements were made can be examined on the point under S. 155 of the Evidence Act. 11 B. H. R. 120.

ACT I OF 1872, S. 92.

24. Under Act I of 1872, S. 92 no evidence of any oral agreement is admissible to vary the terms of a *kobala*, which is on the face of it an unconditional sale. 23 W. R. 167.

ACT I OF 1872, S. 113.

25. The power to cede territory was not one of the powers to which the Secretary of State for India in Council succeeded under Act XXI and XXII Vic. c, 106, when the Government of India was, by that Statute, transferred to Her Majesty, inasmuch as such a power was not possessed by the East India Company.

The Indian Legislature cannot make, and the Crown cannot sanction, a law having for its object the dismemberment of the State in times of peace, as such a law must of necessity affect the authority of Parliament, and those unwritten laws and constitutions of the United Kingdom of Great Britain and Ireland, whereon depends the allegiance of persons to the Crown of the United Kingdom.

S. 113 of the Evidence Act I of 1872 therefore, though not disallowed, is not protected by S. 24 of Statute XXIV and XXV Vic., c. 67, and

the direction therein contained, that a notification in the *Gazette of India*, that any portion of British territory has been ceded to any native State, Prince, or Ruler, shall be conclusive proof that a valid cession of territory took place on the date mentioned in such notification, cannot be followed. 10 B. H. R. 37.

ACT I OF 1872, S. 153 Illustration(C.)

26. The statement of a witness for the defence, that a witness for the prosecution was at a particular place at a particular time, and consequently could not then have been at another place, where the latter states he was and saw the accused persons, is properly admissible in evidence, even though the witness for the prosecution may not himself have been cross-examined on the point.

Where such a statement, after being admitted, was withheld from the jury, the High Court ordered a new trial. 11 B. H. R. 166.

ACT I OF 1872 S. 167.

27. *Semble.* Section 167 of Indian Evidence Act applies to Criminal trials by jury in the High Court. 9 B. H. R. 358.

ADMISSION.

28. A mere admission is not conclusive. It is so only in certain cases, *e. g.* where it has been acted upon by the party to whom it was made. Thus a statement made in a former suit in which the Court, so far from acting upon it, passed a decree opposed to it cannot be treated as conclusive. 18 W. R. 347.

Where a plaintiff deliberately claimed lands as rent-free, he was not allowed, merely on the ground of the proprietor admitting the lands to be leased to plaintiff's vendors, or even of the defendant making a somewhat similar admission to benefit by such admissions and vary his claim. 6 W. R. 290.

30. *Quere.*—What is the effect of admissions made by a person who subsequently adopts another, in binding the person adopted. 20 W. R.

31. Where parties allow a suit to be conducted in the Lower Courts as if a certain fact was admitted, they cannot afterwards in special appeal question it and recede from the tacid admission, 23 W. R. 174.

32. The fact that no objection was raised by the representatives of the present plaintiffs against pottahs put forward in suits to which parties, is an admission of the *bona fide* of the pottahs. 10 W.R.

. The plaintiff and defendant both claim under S. The defen- appealed urging that as S. admitted the *mokurruree* lease of the defendant's purchaser, the plaintiff was bound by S.'s admission. Held that the plaintiff was not bound by any admission of S., though he might have been by any *bona fide* act of S. 3 W. R. 143.

34. Statements recorded in a rent suit under Act X of 1859, which do not conform to the requirements of S. 60, cannot be relied on as admissions. 24 W. R.

In a suit by the grand children of the deceased daughter of a member of joint Hindoo family, who, though not entitled to his property as his heirs, had been long in possession, the surviving daughter, in whom according to Hindoo law her father's interests would now be legally vested, admitted by a petition filed in this suit that by her gift or relinquishment plaintiffs had a title to her father's share. The admission was held to be evidence that such title existed anterior to the commencement of the suit. 14 W. R. 484.

ADMISSION (Before Registrar).

36. An admission before a Registrar of the receipt of purchase-money attested by his endorsement, as required by clause 3 section 66 Act XX of 1866 though evidence of the strongest and most reliable description, ought not to be treated as conclusive. In the face of such admission, however, the party seeking to get out of its effect must make out his case by very clear evidence. 15 W. R. 280.

ADMISSION (By Daughter of Mortgagor).

37. The admission of the daughter of a mortgagor being that of a person having no title to the estate in question in the suit, is not binding on such mortgagor.

It is the province of the Court which has to decide issues of fact, to determine the amount of credit to which such particular proof offered is entitled; and with the fair exercise of its discretion in this respect by such Court, the High Court, as a Court of special appeal, is not at liberty to interfere. 2 N. W. P. 207.

ADMISSION (By Defendant).

38. A defendant's admission, if taken at all, must be taken as a whole, but it cannot bind co-defendants. 22 W. R. 519.

39. If a defendant's admission is read against him, the whole of it must be taken together. But by this it is not meant that separate and distinct allegations made without any qualification may not be used against him. 10 W. R. 190. (9 W. R. [illegible]

A plaintiff abandoning his own case and falling back on the [illegible]n of the defendant is bound to take those admissions as they stand and in their entirety. 15 W. R. 452.

41. A defendant must be taken to admit all material allegations in the plaint which he does not traverse. 1 B. H. R. 85.

42. An admission of a fact on the pleadings by implication is not an ission for any other purpose than that of the particular issue, and is tantamount to proof of the fact. 23 W. R. P. C. 214.

43. When a defendant admits any one fact contained in the written statement of the plaintiff and thereby excludes independent evidence thereof, he is not entitled to say that the plaintiff has relied on his

ment as evidence, and that he (defendant) is in consequence in a position to claim that the whole of it may be read as evidence in his favor. 16.

44. In a suit for a share of certain property where the defence was upon a *mokururee* deed under which the defendants alleged that their predecessor and themselves had had possession, the Lower Apellate Court gave effect to certain supposed admissions without noticing matters which had been noticed in the judgment of the first Court as having occured subsequently to the admissions and rended them nugatory.

Held, that the Lower Apellate Court's decision was erroneous and ought to be reversed. 20 W. R. 480.

45. The error of a Judge, in stating that the rate admitted by the defendant in a rent suit was the old rate shown in a former decision when the rates were different, was held to be no ground for special appeal, where a defendant admitted having held a certain quantity of land as *bhaolee*, but pleaded that it had been washed away by the river, and the first Court regarded the plea of submersion to be untenable. Held, that this could not be treated as an absolute finding that there had not been diluviation of the land, and that the Court was not bound to fix upon that part of defendant's statement which contained the admission, and hold him liable for the rent of the *bhaolee* land. 19 W. R. 430.

46. Although a plaintiff, when the defendant denies his claim, is bound to prove his case by the document on which he relies, still, if the defendant admits any sum to be due, that admission, irrespective of proof offered by the plaintiff, is sufficient to warrant a decree in the plaintiff's favor for the amount covered by the admission. 6 W. R. 133.

47. Plaintiff sued to recover rent for several years on an instrument alleged to have been signed by all the ryots on the estate. Defendant denied having been a party to the instrument, but admitted that he held a small portion of the land of the defendant with a small rent, and that somewhat more than a year's rent was due.

Held, as plaintiff relied entirely upon the admission of the defendant both as to the amount due and for proof of his cause of action, he must accept that admission as a whole. 12 W. R. 317.

ADMISSION (By Defendant's Ancestor).

48. An admission made by defendant's ancestor may be evidence of some weight that may be used against them; but it is only evidence upon which the Court which is trying the suit may act or not according as it considers it ought to have effect given to it. 13 W. R. 348.

49. If A admits that he made a purchase as against for B, this admission is evidence against A's heirs and against C who claims through them, to show that the purchase was made by A as agent and not on his own account. 2 W. R. 190.

ADMISSION (By Dismissed Manager).

50. A manager's authority to make any admission which can be bind-

on his employers is withdrawn when he is dismissed, whether the is or is not upon such a notice as the manager has a right to demand. 21 W. R. 405.

(By

51. An admission made by an intervenor in a former suit is evidence against him, *quantum valeat*, in a subsequent suit. 14 W. R. 165.

52. An admission made in a verified petition by an intervenor in an Act X suit, and repeated in a verified plaint filed by him in a regular suit, was held to be binding in a subsequent suit on the party who made it. 15 W. R. 437.

ADMISSION (By Judgment-Debtor).

The admission by judgment-debtors of a certain rate of *wasilat* concludes them in law. 9 W. R. 211.

ADMISSION (By Occupant).

54. A return made to a Collector by an occupant of land, stating the amount of the rent, is an admission as to the amount of rent, binding upon the occupant and all who claim under him. 18 W. R. 105.

ADMISSION (By Party in former suit).

55. Admissions &c., by the parties in a former arbitration may be used in evidence in a subsequent suit. 7 W. R. 249.

56. Plaintiff sued in the Revenue Court for the recovery of rents fraudulently misappropriated by defendant, and upon defendant's allegation that plaintiff was *etmamdar* or *gomashta*, and not *ijaradar*, the Deputy Collector dismissed plaintiff's suit for want of jurisdiction. Plaintiff now sues in the Civil Court, and upon defendant again raising the plea of non-jurisdiction, the Moonsiff came to the conclusion that plaintiff's allegation that he had been *etmamdar* was false. Held that any admission or allegation of the defendant in the former suit, put in evidence by the plaintiff, was amply sufficient to support the plaintiff's allegation in this suit that he had been *etmamdar*; and that the Moonsiff went out of his way to enquire into a fact which was not disputed by either of the parties. 17 W. R. 372.

ADMISSION (By Party in other cases):

57. A statement made by defendant in another suit may be used as an admission within the meaning of S. 18 of the Evidence Act. 22 W. R. 303.

58. An admission made by a party in other cases may be taken as evidence against him, but cannot operate against him as an estoppel in a case in which his opponents are persons to whom or to any one else concerned the admission was not made, and who are not proved to have ever heard of it or to have been in any way misled by it or to have acted in reliance upon it. 5 W. R. 209.

Admission made by a defendant in other suits brought by him

third parties cannot be treated as estoppels in a suit to possession of a different property under different circumstances. 19 R. 299.

60. A decree was given in favor of A in a suit by A against B, on a *Kistbundee* in which B admitted his share of a debt contracted by him B and C. Held that A is not entitled to recover in a subseqnent suit brought by him against both B and C for the balance of the same debt, B not having made any admission in this second suit and there being no evidence to support the claim against C. 8 W. R. 448.

61. Where the defendant, in a former suit, admitted the relation of landlord and tenant between himself and the plaintiff, it was held that in a subsequent suit for a *Kuboolcat* by the plaintiff, it was sufficient for the plaintiff to put in the defendant's deposition in the former case as proof of the relation of landlord and tenant. 9 W. R. 162.

62. A copy of a defendant's deposition in a former suit having been put in by plaintiff at a late stage of the case, when defendant had no means of explaining away any supposed admission therein : Held, that the first Court was wrong in accepting the same as an admission binding on defendant and that the Lower Appellate Court was right in sending for the defendant and examining him on the subject. 16 W. R. 220.

ADMISSION (By Plaintiff).

63. Where a defendant seeks to make use of statements which have been put in evidence, and to treat them as admissions by the plaintiff who put them in, it is competent for the plaintiff to show the real nature of the transaction to which they relate and to get rid of the effect of the apparent admissions. 18 W. R. 485.

64. The mere fact of non-traverse of the plaintiff's allegation of heirship was held not to amount to an admission of title, especially (as in this case) where there was a general denial of the plaintiff's allegations including that of plaintiff's title, and where the real question at issue was as to the share to which plaintiff was entitled. 17 W. R. 171.

ADMISSION (By Pleader on behalf of Client).

65. When a pleader in the conduct of a suit makes admissions on behalf of a client, the client is bound by such admissions. 5 N. W. P. 2.

66. A party is bound by the admission of his duly constituted Vakeel, where the admission is one of a fact which, but for such admission, the opposite party would have had an opportunity of proving. 9 W. R. 485.

A statement made in a case by a pleader on behalf of his client after full consideration and consultation, is admissible as evidence against that client in another case in which he is a party. 15 W. R.

A Vakil's admission during the trial of a suit is legal evidence by which his client is bound, though it is open to the latter to show that the

effect of the admission is not such as to invalidate his claim. 9 W. R. 375.

69. A distinct admission of liability made by a Vakil who represented the defendant, and whose authority was not questioned, was held sufficient to warrant a decree in favour of the plaintiff. 21 W. R. 3

ADMISSION (By Zemindar).

70. Where tenants sued for a declaration that their holding was *mo kurrurce* at a given rent and the *Surburakar* of their zemindar admit their right on behalf of the zemindar, who himself filed a petition corborating his *Surburakar's* statement, it was held that these admissi..... would bind any subsequent zemindar not being an auction-purchaser at a sale for arrears of Government revenue. 10 W. R. 72.

ADMISSION (How long and how far binding).

71. An admission once made is binding against the party making it for all the purposes of the suit, unless the admission is shown to have been recorded erroneously. 2 W. R. Act X. 1.

ADMISSION (Made in a Deposition.)

72. A party's admission as to the contents of a document not made in the pleadings but in a deposition, is secondary evidence, and cannot supply the place of the document itself. 8 B. H. R. A. C. J. 163.

ADMISSION (Made with fraudulent purpose.)

73. A party claiming under another who has made admissions as to a transaction to which that other was a party, is at liberty to allege and prove that the admissions were made with a fraudulent purpose and were not true, and to show the real nature of the transaction. 20 W. R. 112.

ADMISSION (Of Another.)

74. Where a person uses the admission of another as evidence, the whole admission must be put in. He cannot put in half, and exclude the other half. Those who have to decide upon the evidence are not bound to believe the whole of the statement. 7 W. R.

ADMISSION (Of Defendant's Pleader),

75. The admission of a defendant's Vakil in Court was held to be legal evidence of the receipt of money and to do away with the for other proof. 10 W. R. 322.

ADMISSION (Of Executors.)

76. The admissions of the executors of a donor treated as the sions of the donor. 1 W. R. 340.

ADMISSION (Of forged Document.)

77. The absence of erasures or alterations is no ground for admitting what is at first sight a palpable forgery to be a true document. 4

78. If an instrument on which a case depends, should appear to have been altered, it cannot be received in evidence or be acted upon till it is most satisfactorily proved by all the subscribing witnesses at the least and other evidence that the alteration was made antecedently to the signature. 5 W. R. P. C. 53; 1 M. I. A. 420.

ADMISSION (Of former Owner of Property.)

79. Admissions subsequently made by a debtor whose property has been sold, are not evidence against the purchaser of the property. 5 W. R. 268.

B

BALANCE (Of Account)

80. Action by Bankers, against the representative of a deceased customer, to recover a balance of an account alleged to be due to the Bankers by the deceased at the time of his death, dismissed by the Sudder Court, no satisfactory proof having been given that such balance was due. Such finding sustained on appeal by the Judicial Committee. 5 M. I. A. 432.

81. A suit having been brought in Benares for a sum alleged to be due on the balance of partnership accounts, the parties agreed by bond to refer the accounts to arbitrators, according to whose award a given sum was found due on balance of accounts to the plaintiff subject to certain objections which could not be settled without the inspection of the joint concern papers of the Calcutta *Kothee*. The Provincial Court ought to have postponed making its decree until either the copies had been verified or the originals had been produced, unless it could have been satisfied that there was no validity in the objection. But the Court was not satisfied that there was no validity in the objections, for, by its decree, it reserved a right to the defendant to recover what she could upon the objections. Whether the Provincial Court could have admitted the use of the original books upon a review of the decree, it was held that the Sudder Court ought, under section 16 Regulation VI of 1793, to have used the evidence to be supplied by the original books, or to have ascertained that the sum mentioned as the balance due, subject to the objections, was a balance due without objection, instead of merely affirming the decree of the Provincial Court. 5 W. R. P. C. 76.

BANKER'S BOOKS.

82. The production of Banker's books, with the entries of the items constituting the demand, kept according to the established custom of *Mahajans* in India, is not of itself sufficient evidence to establish such a claim, strict proof of the debt being required. 5 M. I. A. 432.

83. In an action by a banking firm against another firm to recover a balance upon an account between them, the plaintiff put in evidence the account-books of his firm, and the Inspector of the Court certified that the books were regularly kept, consistently with the rules of banking, and that they agreed with the account rendered by the plaintiff to the defendant. The plaintiff, however, examined no witness to prove that the

books were regularly kept, or the general accuracy of the particular charges constituting the demand; he proved admissions by the defendant of the correctness of the account and of an award in his favour of one of the disputed items The defendant in his defence did not deny the accuracy of the appellant's account, or of the books put in evidence but objected to two items in the account, and claimed a set-off, but examined no witnesses to rebut the plaintiff's case. Held (reversing the Sudder Court's decree) that although the plaintiff's books, and the Inspector's report, were not conclusive evidence, yet that the necessity of strict proof was removed by the admission of the defendant, and the fact of the absence by him of any evidence to impeach the accuracy of the accounts, the disputed items being satisfactorily accounted for. 6 M. I. A. 88.

BOND (Unregistered).

84. Held, following the decisions of the Calcutta Madras and Bombay High Courts, (9 W. R. 111; 10 W. R. 252; 4 M. H. R. 174 & 4 B. H. R. A. J. 79.)but doubting,* that an unregistered bond, whereby immoveable property was pledged by way of collateral security, was admissible in evidence where effect was sought to be given to it for the purpose of obtaining a decree for the money due under it. 6 B. H. O. C. J. 134.

BUNDOBUST PAPERS.

85. *Bundobust* papers are nothing more than a contemporaneous record of tenures as they existed in the years specified, and do not in any way import the commencement of a tenure or a fixing of the rent at that particular time. 4 W. R. Act X. 43.

BUTWARA (Papers).

86. *Butwara* papers are only evidence of the proportionate assessment of Government revenue payable by proprietors after partition; not evidence, binding ryots as to what holdings are theirs, or what theirs are as rates, or periods of occupancy. 10 W. R. 197.

BUTWARA PAPERS (Private).

87. Private *butwara* papers are good evidence towards showing what lands are in fact comprised in the estate at the time of the *butwara*. W. R. S. N. 238.

C.

CANOONGEE PAPERS.

88. *Canoongee* papers and proceedings of settlement officers are good evidence in questions of *pergunnah* rates, standard of measurement, and the like. 2 W. R. Act X. 13.

89. Old *canoongee* papers cannot, in the absence of evidence to show what they are, and that they came out of proper custody, be received in evidence: before such papers can be admitted as evidence against a party, it must be shown how they can be used againt him. 8 W. R. 517.

* Note.—It has been since held in the case of Sangappa V. Basappa, decided on the 18th January 1870, by Couch C. J., and Melvil, J. (to be reported) that where a mortgage bond an express promise to pay the money secured by it, such bond, though not be put in evidence in a suit for the recovery of the money.—Ed.

(Reasonable and Probable).

The circumstances that the fact stated in an application for were true, and that nothing was concealed which the Court ought to have known, is evidence that the applicant had reasonable cause upon those facts for the application. 4 N. W. P. 42.

CERTIFICATE (Of Registration).

91. A certificate of registration is evidence that a bond was registered, but not that it was executed. 6 W. R. 105.

CHELLUNS (Collectorate).

92. Collectorate chelluns acknowledging the receipt of Government revenue, were held to be no evidence of the necessity for the sale of the ancestral property on account of which the revenue was paid. 8 W. R. 519.

CHITTAS.

93. *Chittas* are evidence of title in boundary disputes, if an account is given of them, and they are properly introduced and verified. 11 W. R. 350.

94. Where a party putting in *chittas* called in a witness to attest them but the witness did not do so, and the party did not apply to the Court to compel him to do so, the *chittahs* were held to be no legal evidence even though admitted by the Lower Court without objection from the opposite party. 12 W. R. 39.

95. *Chittas* and maps made in contemplation of resumption proceedings in the presence of both sides and signed by the parties are legal evidence. 19. W. R. 309.

Where chittas were produced by plaintiff as evidence of certain lands being *mal*, it was held that they were sufficiently attested by the deposition of the village *gomastah* that they were the *chittahs* of the village while he was *gomastah* and that he had been present when, with their assistance, a portal measurement had been carrid out in the village. 10 W. R. 443.

97. *Chittahs* made by the Revenue authorities in the course of measurement of a Government *mehal* stand precisely on the same footing as [illegible]s made by them in inquiries relating to revenue, and are equally [illegible]ble as evidence the circumstance that the proceedings relate to [illegible] estate cannot deprive them of the character of public proceedings upon matters of public interest. 13 W. R. 56.

CHITTAS (Butwara).

A *Butwara* between *zemindars* is not binding in any way upon the ryots, and butwara *chittas* are no evidence in a suit for possession of a jote and to set aside a summary award under Act XIV of 1859 S. 16. 21 W. R. 29.

CHITTAHS (Government).

A Government *chitta* is admissible as evidence in a boundary [illegible] R. 110.

Under section 58 Act III of 1851, Government *chittas* are admissible as evidence in cases in Chittagong. 10 W. R. 340.

CLAIM (To share in the Estate).

101. The very strongest and most relinble evidence is required in the case of a claim to a share in an estate larger than the Hindu law allows. 6 W. R. 52.

(Of Prisoners*)

The confession of one of the prisoners cannot be used to cor- the evidence of an accomplice against the others. 11 B. H. R.

103. Act 1 of 1872 S. 30, which makes the confession of one prisoner ence against persons other than the man who made the confession, applies only to cases in which the confession is made by a prisoner tried at the same time with the accused person against whom the confession is used. 21. W. R. Cr. 65.

104. The confession of co-prisoners cannot, under the Evidence Act 1 of 1872, S. 30, be treated as evidence of ordinary character not distinguished by any special infirmity or qualifications against the other prisoners, as in addition to the infirmity inherent in an accomplice's testimony, they are not given on oath and are not liable to be tested by cross-examination. 23. W. R. 24.

105. According to S. 24 of the Indian Evidence Act a confession is inadmissible only if the Court considers it to have been induced by illegal pressure. Where the Session Judge did not consider a confession to have been so induced, the High Court, upon a reference under S. 263 of the Code of Criminal Procedure :

Held it to have been properly admitted, and finding it to be full and clear, and supported by reliable evidence acted upon it by convicting the person who made it, notwithstanding his retraction of it in the Court of Session, and his being found not guilty by the jury.

In the absence of evidence that a confession of an accused person has been induced by illegal pressure, it is not to be presumed that such confession was so induced. 11 B. H. R. 137.

106. While A and B were being jointly tried before a Court of Session, the first for murder and the second for abetment of murder, a confession made by A that he himself had committed the murder at the instigation of B, was put in as evidence against A. Subsequently the charge against A was altered to one of abetment of murder and the Session Judge, under the authority of S. 30 of the Indian Evidence Act, used the confession against both, and convicted them.

The High Court Held that the original and amended charges were so nearly related that the trial might, without any unfairness, be deemed to have been a trial on the amended charge from the commencement; and that no objection having been taken by B, who was represented by

* See Criminal part of my Digest page 76—80.

of A's confession against him when the charge against A was altered, the Session Judge was justified in using the confession against B. also. 11 B. H. R. 278.

107. Statements made by one set of prisoners criminating another set of prisoners when each iudividual prisoner made a case for himself on which he was free from any criminal offence, ought not to be taken into consideration under S. 30 of the Evidence Act against the prisoners of the second set, when the two sets, although tried together, were tried upon totally different charges. 21 W. R. 53.

108. A Judge should charge the jury that the mere confessions of prisoners tried simultaneously with the accused for the same offence, which are in a very qualified manner made operative as evidence by Act 1 of 1872 S. 30, are only to be rated as evidence of a defective character, and that they require especially careful scrutiny before they can be safely relied on. 21. W. R. Cr.69.

109. A prisoner who pleads guilty at the trial, and is thereupon convicted and sentenced, cannot be said to be jointly tried with the other prisoners committed on the same charge who plead not guilty. Where, therefore, one of eight prisoners before the committing Magistrate made a confession affecting himself and five others, and afterwards, at the trial before the Assistant Session Judge, pleaded guilty, and was thereupon convicted and sentenced, and the Judge then proceeded to take his evidence on solemn affirmation, and recorded his confession as evidence in the case against the other prisoners. Held that the Judge was wrong in taking the confession into consideration against those prisoners who pleaded not guilty. The proper course for the Judge was either to have sentenced the prisoner who pleaded guilty, and then put him aside, or to have waited to see what the evidence would disclose. 11 B. H. R. 149.

CONFESSION (**Of Witness**).

110. The confession of a witness in the shape of a former deposition can be used as evidence against a prisoner only on the condition prescribed by section 249 Code of Criminal Procedure; that is, it must have been duly taken by the committing officer in the presence of the person against whom it is to be used. The certificate of the Magistrate appended to such confession, in order to afford *prima facie* evidence under section 80 of the Evidence Act of the circumstances mentioned in it relative to the taking of the statement, ought to give the facts necessary to render the deposition admissible under the section 249. 21 W. R. 5.

CONSENT.

111. The mere attestation of a deed of sale by a a relative does not necessarily import his concurrence. 12 W. R. P. C. 47.

112. In a former suit the plaintiff consented to the question then at issue, namely, the validity of an adoption being tried according to the provisions of the Bengal Law. Held, that the admission did not, under

the circumstances, make him subject in all other matters (the law of inheritance, for instance) to the Bengal Law. 1 W. R. 123.

CONSENT (Priori).

113. A *priori* consent to abide by the testimony of a certain witness cannot bind the consenting party to hearsay testimony; but only to such evidence as is legally admissible, *i, e.*, evidence as to such facts as the witness can directly speak to. 2 W. R.

CONTRACT (Written and Verbal).

Evidence cannot be admitted in proof of a verbal stipulation to vary a written contract; nor is evidence admissible of the acts of the parties when it is given entirely and absolutely in support of such verbal stipulation. 11 W. R. 450.

COPIES.

115. Documents tendered as evidence are properly rejected on the ground that they are copies inadmissible under the Law of Evidence, and it is entirely a matter of discretion to the Court in rejecting a copy to allow the party to file the original. 22 W. R. 355.

COPY (Exclusion of).

116. The Judge was held to have been wrong in summarily excluding copies of a *Kobala* and of certain admissions from evidence merely because they were copies and not originals, when no objection was taken to them, and in having rested his decision against the plaintiff's title upon two decrees, one of which was not between the parties to this suit, and the other had been found by the first Court to have been fraudulently obtained, without any enquiry having been made into this matter by the Judge. 17 W. R. 378.

COPY (Of Bynamah).

117. In a suit by the *putneedar* for rent due under a durputnee, defendant was summoned to produce the durputnee pottah and a bynamah which he had produced on a former occasion in a different suit. On his representing that they were lost, plaintiff put in a certified copy of the bynamah; obtained from the office of the Registrar of deeds: Held that as the defendant failed to produce the bynamah or to prove that it was out of his power to do so, the Judge might have passed judgment against him at once under section 170 Act VIII of 1859. As the defendant gave no clear evidence to rebut the bynamah put in by the plaintiff, the copy of the bynamah was good evidence in support of the plaintiff's case. 16 W. R. 196.

COPY (Of Copy).

118. An authenticated copy of an authenticated copy of a deed is admissible as secondary evidence; but proof of the execution of the deed itself must be given before the copy can be admitted. 7 B. L. R.

Copy of a document coming out of a public office, and certified

by the proper officer of that department as a copy of a copy deposited there, admitted as evidence. 7 M. I. A. 128; 4 W. R. P. C.

120. A certified copy of a document deposited in a public office, which document is itself a copy, is admissible as secondary evidence where the absence of the original is duly accounted for. 5 B. H. R. A. J. 48.

121. The copy of a copy of a document may be admitted as evidence when it comes from a public office and the original is shown to have been lost, but not otherwise. 15 W. R. 102.

122. A copy of a copy of a sunnud is not admissible in evidence. 6 W. R. 80.

123. An original document, upon which the plaintiff based his suit, was proved to be in the possession of the defendant. In a previous suit, the defendant's mother had filed the document; and on removing it, had according to rules of practice, placed a copy there instead. The defendant on being summoned failed to produce the same. Held, that a copy of such copy, so filed in Court, was admissible as evidence.

Held also that a mother can bind her sons, acting in good faith as their guardian. 3 B. L. R. A. J.

124. A copy of a document purporting to be the copy of an original *Kobalah* alleged to have been registered by a Cazee does not come within the provisions of Regulation XXXVI of 1793 section 17.

It might possibly be receivable as evidence if the accuracy of the first copy, and the execution and loss of the original, were proved. 8 W. R. 438.

COPY (Of Deed of Partition.)

125. A copy of an alleged deed of partition, set up to defeat the ordinary rule of Hindu law with respect to succession (*viz.* that a step-brother cannot inherit in preference to an uterine brother), and taken from the record of a miscellaneous proceeding without any suggestion as to what has become of the original, is not admissible in evidence. 5. W. R. 21.

COPY (Of Deed of Purchase).

126. A copy of a deed of purchase was refused in evidence, the plaintiffs, who had taken nearly 10 years to sue for the property, being unable to produce the original deed or even the copy which they produced at the first hearing of the case. W. R. S. N. 6.

COPY (Of Deposition).

127. A copy of a deposition of a person who is alive, if filed in the Lower Court and not objected to there, may be used as evidence in the Appellate Court. 5 W. R.

128. The absence of an original deposition from a record must be satisfactorily accounted for before a copy can be looked at; and such copy should be proved to be a correct copy before it can be used. 21 W. R. 257.

129. Where a copy of a deposition is improperly admitted, such admission is not ground of itself for a new trial, if, independently of the evidence so admitted, there is sufficient evidence to justify the decision. 20 W. R. 384.

130. A copy of a deposition of a *Kazee* in a former case, in which defendants were not parties, is not admissible as evidence while the is admittedly alive and can be examined. 24. W. R. 473.

COPY (Of Deposition given when Defendant was not a party).

131. Copies of depositions given in suits in which defendant was not a party cannot be treated as evidence in a case in which he is a party. 8 W. R. 509.

COPY (Of Document).

132. Although the admissibility in India of copies in evidence must not be dealt with by the strict rules prevailing at a *nisi prius* trial in England, yet Their Lordships were of opinion that, when a copy has been in any way received and it becomes the function of the Judge to consider what weight and value should be given to it, it is the duty of the Judge, in order to test its authenticity, to satisfy himself that there is some reason for producing a copy instead of the original, that there should be some account given in ordinary cases of the original, and some sufficient reason assigned why the original is not produced, and the parties rely upon the copy. In all cases the whole of the circumstances should be looked at in order that the Judge may come to a definite conclusion as to the genuineness of the document in question, and the weight and value which he will attach to it. There is a considerable difference between cases where documents come in as mere links or as part only of the evidence in the case, and those in which the suit is actually brought upon the instrument of which a copy is tendered and the whole cause of action depends on the proof of the original instrument; strict proof may properly be required in the latter case.

Dealing with the present document, their Lordships were not prepared to say that the High Court had miscarried in concluding it to be genuine, but the High Court did not rest upon that document wholly but proceeded upon the whole of the evidence in the case, which appeared to Their Lordships amply sufficient to support the finding of the Court. 17 W. R. P. C. 286.

133. Authenticated copies of documents, of which the originals are filed in another suit, are admissible in evidence when not objected to by the other side. 2 W. R. 247

134. A copy of a document should not be received in evidence until all legal means have been exhausted for procuring the original. Where a document is alleged to be in the possession or power of a certain party, such party's denial in pleading that he has ever had the document is not sufficient to justify the omission of the processes the law provides for his testimony, and his being called on to produce the original. 9 W. R. 248.

135. A copy of a document cannot be admitted as evidence unless the absence of the original is properly accounted for: the mere fact of latter being in another Court is not a sufficient reason. 10 W. R. 339.

136. A copy of a disputed deed cannot be taken as evidence without proof that the original is out of the power of the party producing the copy. The admission of the existence of the original is not tantamount to an admission of the correctness of the copy. W. R. S. N. 186.

137. Though a copy of a document should not be put in as evidence when the original itself is available, yet in a case in which a copy of a letter was filed without objection in the Court of first instance, and the writer of the letter (one of the defendants) was cross-examined as to it, the Lower Appellate Court was held not to be justified in refusing to consider that the copy was evidence of the letter. 10 W. R. 207.

COPY (Of English Judgment).

Copies, and not translations, must be tendered where parties, to put in evidence judgments delivered in English; but there is no law which declares that Bengalee copies of formal decrees of a Zillah Court are inadmissible. 10 W. R. 23

COPY (Of Hustabood).

139. An authenticated copy of a hustabood of 1209 (B. S.) of which the original was put into the collectorate by the Zemindar according to Regulation VIII of 1800, was held to be no evidence against third parties, defendants in a rent suit. 9 W. R. 105.

COPY (Of Income-Tax Returns).

Copies of Income Tax returns were refused to be received in evidence. W. R. S. N. 105.

COPY (Of Kazee's Register).

141. A copy of a Kazee's register is not receiveable in evidence. The register itself should be produced or proof given of its loss, and the entry should be verified. 2 N. W. P.

COPY (Of Pottah).

142. A copy of a pottah cannot be received in evidence without cause being shown for the absence of the original. 10 W. R.

Copies of pottahs and jumma-wasil-bakee papers ought not to be accepted on the mere fact of their being attested or authenticated copies, but should be proved by the best and most distinct evidence 8 W. R. 488.

144. In a suit for possession with mesne profits of an 8 annas share of 3 Talooks under a miras pottah alleged to have been granted to ff by T. S. the wife of R., a co-sharer with the other defendants, the e was that T. S. had no rights or interests in the land for which

the suit was brought, and that neither she nor her husband ever had any possession thereof.

Held, that a copy of a pottah alleged to have been granted by T. S. which was a statement to the effect that her lessee was in possession, could not be said to be of itself sufficient to make out such a case for plaintiff, as to obviate the necessity of further proof, till it was rebutted by defendant. 11 W. R. [illegible]

COPY (Of Public Document).

145. The native Courts in India, in receiving evidence, do not proceed according to the strict technical rules adopted in England. According to the practice there, a copy of a public document, authenticated by the signature of the proper officer, is received as *prima facie* evidence, subject to further inquiry, if it is disputed. 9 M. I. A. 67 ; 1 W. R. P. C. 30.

COPY (Of Quinquennial Register).

146. An examined copy of a quinquennial register is evidence without the production of the original. 7 W. R. 14.

COPY (Of Record-Keeper's Reports).

147. A copy of a Record-keepers report is not evidence ; nor is a copy of a Magistrate's proceeding in a suit regarding other property covered by the deed in dispute. 1 W. R. 340.

COPY (Of Schedule Map).

148, Where a copy (the original having been filed in another suit) of a schedule map showing the different plots of land belonging to each of several shareholders and defining their boundaries had, as appeared from various petitions on the record, been filed on more than one previous occasion, and relied upon by the parties to this suit, including the plaintiffs when it suited their purpose to do so, and where it appeared moreover that plaintiffs had on many previous occasions admitted the correctness of the map and that their shares had been demarcated therein. Held that the plaintiffs could not now sue for a fresh measurement and demarcation, and that the Judge, in not considering the copy of the map as binding on the plaintiffs, was wrong in his estimate of the weight to be given to it. 18 W. R. 346.

COPY (Of Solehnama).

149. In a suit for possession where plaintiff put in a copy of a solehnamah to which defendant was not a party : Held that although no question of right or title could be decided adversely to the defendant on the basis of that agreement, yet it would be evidence that by an order of Court passed on that solenamah the plaintiff was put with possession. 15 W. R. 261.

COPY (Of Survey Papers).

150. Certificated copies of survey measurement chittas, field books, and maps are admissible in evidence. 8 W. R. 167.

COPY (Of Translation of Magistrate's supposed English order.)

151. A copy of a translation of what a Magistrate is supposed to have said in English in a proceeding under Act IV of 1840, is no evidence of an admission. 7 W. R. 141.

COPY (Of Wajib-ool-urz).

152. Where a *wajib-ool-urz* was destroyed in the mutiny, and the plaintiff tendered in evidence a book obtained from the tehseel office, which purported to contain a copy of such *wajib-ool-urz*, and of the signatures of the persons signing the original, and the name of the official in whose presence the instrument was executed, and the Court below was satisfied that there was no reason to doubt its being a genuine copy: Held, that such copy was evidence, not of a contemplated *wajib-ool-urz*, but of one which had been executed and contemplated. 2 N. W. P. 3

COPY (Of Will.)

153. Before a copy of a will is admissible as evidence, it is incumbent on the Court to call upon the party in whose possession the will is to the original. 23 W. R. 241.

CORROBORATION.*

The evidence requisite for the corroboration of the testimony of an accomplice must proceed from an independent and reliable source, and previous statements made by the accomplice himself, though consistent with the evidence given by him at the trial, are insufficient for such corroboration. 11 B. H. R. 196.

CROSS-EXAMINATION.*

155. The essence of cross-examination is, that it is the interrogation by the advocate of one party of a witness called by his adversary with the object either to obtain from such witness admissions favourable to his cause, or to discredit him. Cross-examination is the most effective of all means for extracting truth and exposing falsehood. 6 W. R. 182.

156. It is a well known rule that all witnesses examined-in-chief, are sworn, are subject to cross-examination. The test for determining whether the depositions of witnesses who are absent, or who have been examined in a former suit, can be received, is, whether the party against whom they are to be used had the power to cross-examine. If he could not have cross-examined, the deposition of the witness ought not to be admitted against him. 6 W. R. 1

157. The principle that parties cannot, without the leave of the cross-examine a witness whom the parties having already examined or declined to examine, the Court itself has examined, applies equally whe-

* See Criminal part of my Digest page 81.

ther it is intended to direct the cross-examination to the witness's
ments of fact, or to circumstances touching his credibility, for any
tion meant to impair his credit, tends (or is designed) to get rid of the
effect of each and every answer, just as much as one that may bring
out an inconsistency or contradiction. 11 B. H. R. 166.

158. A witness called by the Court is liable to be cross-examined by any of the parties to the suit. 3 B. L. R. A. J. 146.

159. One co-defendant whose interests are separately represented, cross-examine another. 1 M. H. R. 456.

160. A party summoned by the Court to give evidence is not only required to answer the questions put to him by the Court, but the opposite party has a right to cross-examine him. The statement of any person examined is not admissible, unless the opposite party has had the opportunity of cross-examining him. 11 W. R. 110.

161. When a person is summoned by the Court, he is just as liable to be cross-examined by the parties to the suit, as any other witness. 11 W. R. 468.

CUSTOM (General).

162. A general custom is not proved by the statements of two individuals, or by proving that two particular tenants paid at a particular rate. W. R. S. N. 327.

CUSTOM (Local).

163. In an enquiry as to whether tenures of a certain class are transferable according to local custom, it is sufficient if there is credible evidence of the existence and antiquity of the custom, and none to the contrary; there is no necessity for the witnesses to fix any particular time from which such tenures became transferable. 11. W. 348.

D.

164. The party producing dakhillahs is bound to give some evidence of their having been signed by the person by whom they purport to have been granted, although the opposite party does not deny the signature. 14 W. R. 211.

165. Where persons who subscribed to certain dakhilas were not produced as witnesses, and the absence of the dakhilas was not satisfactorily accounted for, the Lower Appellate Court was held to have been right in law in refusing to attach credit to the evidence of other witnesses who swore to the dakhilas. 11 W. R. 105.

166. The evidence of a tenant deposing to the genuineness of ... khillahs produced by him, if not rebutted, is legally sufficient to prove them. 20 W. R. 264.

167. No dakhilah or document, unless of very old date, or for some other special reason, is admissible in evidence unless it is attested in some way. 9 W. R. 147.

168. Where a party filing dakhilas deposed that the amounts of rents he had paid were according to the sums entered in the dakhilas, such statement was held not to prove the dakhilas, being merely a deposition to the fact of a certain payment of rent, and not to the authenticity of documents filed. 11 W. R. 170.

169. A Civil Court has every right to accept dakhillas tendered a party, as undisputed documents, where the opposite party says that is not prepared to deny their genuineness. 12 W. R. 350.

170. Dakhilas or rent receipts filed by a ryot in a suit for arrears of rent or for enhancement must be proved, whether denied by the Zemindar or not. B. L. R. S. V. F. B. 658.

171. The Judge having disbelieved the evidence of certain mortgagors as to plaintiff's hereditary occupancy, was not bound to take into consideration certain documentary evidence (dakhilas) which were sworn to by the same witnesses. 18 W. R. 61.

172. A ryot who puts in dakhilas as evidence to support his case, is bound to prove them. Their admission as genuine is not to be legally presumed merely because they are not formally disputed by the landlord. 7 W. R. F. B. 526.

DAKHILA (Attestation of.)

173. Dakhillas not denied, need not be attested. 3 W. R. Act X. 148.

DAKHILA (Unattested).

174. Unattested dakhillas, without corroborative evidence are not in law sufficient evidence of payment of rent. 9 W. R. 241.

175. Dakhillas unattested or attested only by the evidence of a manager and mooktear, were held to be no legal evidence of uniform payment of rent. 12 W. R. 267.

DEATH-BED-GIFT.

176. The fullest proof is requisite to support a trust which is declared by word of mouth by a person at the point of death, and is in terms (not clearly indicated) an intention on the part of the donor to deprive his family of all substantial enjoyment of his property. Ordinarily, in such cases, a further opportunity should not be allowed to supply any defects in the evidence adduced at the original trial. 5 W. R. 82.

(Between other Parties).

177. Plaintiff, as representing decree-holder, sued for confirmation of title and for sale of the property in execution. Defendant's case was that he was purchaser for valuable consideration from the original judgment-debtor. The Lower Appellate Court set aside this plea on the

ground that the High Court had declared, in special appeal, in a litigation between defendant and another party, that the purchase in question was spurious, null, and void.

Held that that decision of the High Court, though not binding final evidence against the defendant in this suit, was sufficient to give plaintiff a *prima facie* case which, by the rules of pleading, it was for defendant to rebut. 11. W. R. 118.

DECISION (Ex-parte).

178. An *ex-parte* decision is not sufficient evidence as to the rates of similar lands in the neighbourhood on which to base an enhancement of rent from 17 to 50 rupees. 7 W. R. 194.

DECISION (In former Suit.)

179. A decision in a suit to which plaintiff was not a party, admissible as evidence, cannot be held to be conclusively binding upon him. 24 W. R. 470.

DECISION (Of Inter-partes).

180. A decree in a matter of a mortgage between B and another of the defendants in a suit to which neither the plaintiff nor any one privy to him in title was a party, is not admissible in evidence as a decision *in-* *s*. 19 W. R. 156.

DECISION (Of Court).

181. In a suit to establish an *ilmamee* right to certain lands, plaintiff produced certian transcript decisions of the Civil Courts in suits in which a former holder of the tenure of the person who was said to have created the right, was a party; but the Lower Appellate Court rejected them as evidence on the ground that the defendant was not a party to the suits: Held that the proceedings in such suits came within the meaning of "any transaction" in the Evidence Act of 1872 S. 13, and were admissible as evidence in the case under S. 43, not as conclusive, but as of such weight as the Court might think they ought to have. 22 W. R.

DECISION (Of Court upon evidence, not upon arrangement of Parties).

182. A Court is bound to decide upon the evidence without to any previous arrangement between the parties, as to the mode in which the evidence is to be dealt with. 6 W. R. 82.

DECISION (Of Panchayat).

183. In a suit in which the question was whether there had been a division the sole evidence of division was the decision of a panchayat reciting that division; the question, however, not having been at all material to the point then in dispute. Held, that the decision was not sufficient evidence of the division. 4 M. H. R. 5.

DECISION (On Facts).

In deciding on the facts of a case, Judges should not base their

decision upon some isolated piece of evidence, but take into consideration and record their opinion on the whole evidence offered on both sides. 6. W. R. 9.

DECISION (Without Jurisdiction).

185. A decision set aside by a superior Court, as made without jurisdiction, cannot have any probative force whatever between the parties. 19 W. R. 384.

DECLARATION (In Pleadings).

186. Held that declarations made in pleadings, in suits instituted before the Code of Civil Procedure came into operation, are inadmissible as evidence of the facts stated therein.

Held, also, that a Civil Court, which inspects the record of anther case, under section 138 of Act VIII of 1859, can only use as evidence such documents as are otherwise unobjectionable, and admissible for or against either of the parties to the suit. 2 B. H. R. 341.

DECLARATION (Of Deceased Person).*

187. The declaration of a dying person, *albeit* made on solemn affirmation before a Magistrate, who was not, however, the committing Magistrate and signed by him, is not admissible in evidence without legal proof that the deceased made such a declaration. 11 B. H. R. 247.

188. Section 47 Act II of 1855 does not refer to evidence of living witnesses, but to declarations of deceased persons in cases of pedigree, who though not related by blood or marriage to the family, were intimately acquainted with its members and state, such declarations, after the death of the declarant, are admissible as evidence in the same manner and to the same extent as those of deceased members of the family. 9 W. R. 151, 152.

DECLARATION (Written-)

189. A writing under the hand of a deceased husband declaring that he gave his wife power to adopt, though not complete as a testamentary disposition, may yet be evidence of a declaration of fact. 9 W. R. 464.

DECREE.

190. Decree is a evidence, although the party against whom it is treated as evidence was no party to it. 23 W. R. 293.

191. Decrees between parties may be most forcible evidence of title but can scarcely be evidence of possession unless couched in a form which is declaratory of possession. 20 W. R. 271.

192. A decree is admissible as evidence even if i
rative from not
W. R. F. B.

* See Criminal part of my Digest page 82.

193. When a decree is put in as evidence, it is not open to the Judge to take into consideration its merits or the evidence on which it was founded. 14 W. R. 391.

Decrees and proceedings to which the defendants were not ties, are not admissible as evidence against them. 1 W. R. 89.

DECREE (Ex-parte).

195. The fact of a decree in a rent-suit having been given *ex* , does not detract from its value as evidence of the relationship of landlord and tenant between plaintiff and defendant, provided due notice had been served on the latter; and such a decree may be filed as evidence without the judgment on which it was founded. 12 W. R. 473.

196. *Ex-parte* summary decrees are no evidence at all of the rate of rent leviable. At the most, they are proof only of what the zemindar considered were the proper rates. W. R. S. N. 107.

DECREE (For Kubuleut).

197. A decree for a *kubuleut* for arrears of rent is evidence of the rent which the judgment-debtor is liable to pay, only when he is called upon to execute such *kubuleut*; not where the decree has never been executed and no *kubuleut* has ever been given. 20 W. R. 273.

198. Before a decree which requires a person to execute a *k* can be used as evidence of the amount of the rent claimable, the holder must take the steps prescribed in Act X of 1859 S. 81. 21 W. R. 33.

199. A decree which directs that a *kubuleut* shall be given by the fendant at a certain rent, amounts to an adjudication that there is between the parties the relation of landlord and tenant, and is important evidence on that point in any subsequent suit against the same defendant. 22 W. R. [illegible]

DECREE (For Rent).

200. A decree for rent is not proof of actual possession. 21 W. R.

201. A decree for rent at a certain rate is not conclusive proof that the land was held for the years to which the decree relates at that rate, until it has been executed. 20 W. R. 466.

202. In a suit for arrears of rent at an enhanced rate where pleaded the presumption arising under section 4 Act X of 1859, and plaintiff produced in support of his claim a decree of 1860 declaring him entitled to the enhanced rent and a later decree for arrears on the same scale :

Held that the fact that the latter decree had only been executed in part and that defendants never paid more than 2½ rupees to the Government, did not neutralize the effect of a decrees as the very best evidence that the rents had varied since the Decennial Settlement. 11 W. R. 496.

DECREE (Using—to explain inconsistency).

203. Held that the Subordinate Judge was quite justified in using a decree between other parties to explain an apparent inconsistency between certain statements in the plaint and in the evidence of the plaintiff's witnesses, on the ground of which inconsistency the Moonsiff had rejected that evidence; and that the non-filing of this decree in the first Court was a matter entirely within the discretion of the Judge and ought not to be made a ground for reversing a judgment. 17 W. R. 558.

DEED.

204. Instruments which are proved by all the attesting witnesses and against which there is no evidence on the other side, ought not to be set aside and treated as worth nothing on a mere possible suspicion of perjury and forgery. 15 W. R. P. C. 12.

DEED (Alteration in).

205. Suit in the nature of ejectment to recover possession of certain *mouzahs* and to set aside a *sunnud*, or deed, under which they were held, on the allegation that the deed, had been altered after execution, and its purport entirely changed by the insertion of words of limitation, creating hereditary right. The decrees of the Courts in India respecting the alleged alterations being conflicting, the Judicial Committee, upon motion to that effect, ordered the original deed to be transmitted for inspection at the hearing of the appeal.

The Judicial Committee upon appeal reversed the decree of the Sudder Dewanny Adalut, and upheld the deed, as originally containing the words of limitation, being satisfied that the deed had been tampered with while in the custody of the record keeper of the *Sudder Ameen's* Court. 9 M. I. A. 1, 2.

DEED (Destroyed by Party).

206. In a suit brought against a Collector to compel him to refrain from preventing the plaintiff executing his decree against certain land—the only issue being, whether the land was the private property of the judgment-debtors, or Government service land—the plaintiff alleged that the land had been granted in free *inam* by a *sanad*; which he petitioned the Mamlutdar of the pargana to search for, and send to the Collector; and, on a reference by the High Court, the District Judge found that "the Collector did destroy the document that purported to be a copy of a *sanad* such as the plaintiff petitioned the Mamlutdar to search for":—**Held that it was not competent for the defendant to say that the document was not such a one as could be legally admitted in evidence and that the case came within the rule *omnia præsumuntur contra spoliatorem*.** 3 B. H. R. A. J. 116.

(Destroyed in the Mutiny).

7. Though the *onus* of proof of the genuineness of an instrument altered state lies upon the party producing and claiming under it,

the altered and suspecious appearance of the instrument may be explained by proof of its original state when executed, and its existing state sufficiently accounted for, to rebut the presumption of the deed having been falsified and tampered with after execution by the party claiming under it. 9 M. I. A. 1.

208. When a suit was brought on a motgage deed alleged to have been destroyed in the mutinies,—Held that, if it were established that the original deed was destroyed and that there was no copy of it in existence, the Court could receive oral evidence as to its contents and determine the question of the genuineness or otherwise of the deed on that evidence solely. W. R. S. N. 264.

DEED (Of Permission to adopt.)

Where a subsequent deed of permission to adopt was proved, a distinct reference made in it to a former deed of the same character which corresponded in every particular with the description of it given in the subsequent instrument, was, in the absence of proof of the existence of any other document or of any thing calculated to throw doubt on the former instrument, held sufficient to establish its identity. W. R. S. N. 209.

DEED (Of Sale.)

210. Where there is a deed of sale which is inadmissible in evidence, because unregistered, the sale recited in such deed cannot be proved by mere oral evidence. 7 M. H. R. 13.

211. Deeds of sale or wills, which divert the course of inheritance, must be proved by legal evidence before they can become operative. 9 W. R. 257.

DEFAULT.

212. Where a plaintiff has not given any evidence whatever in support of his case, he is not entitled to a decree merely on the default of the defendant to give evidence. 12 W. R. 242.

213. In a suit brought by a decree-holder to establish that certain property belonged to his debtor who alleged that she had parted with the same to her two daughters, one of the daughters having died during the pendency of the suit, her husband who claimed as her heir was opposed both by the debtor and her surviving daughter. Held that the Lower Court had not sufficiently considered this change of circumstances, and was wrong in considering the default of the surviving sister to produce her witnesses as the default of the husband of the deceased sister. Case remanded for a complete trial. 5 W. R. 179.

DEPOSITION.*

214. A deposition made by a person wherein he denied on oath that he had presented a certain petition in Court which purported to be from him, was held to be inadmissible as evidence under Act 1 of 1872 S. 33,

* Criminal part of my Digest page 82.

_____ might have been brought into Court, but was not by those who pleaded the said deposition. 23 W. R. 343.

215. The *Ex-parte* deposition of a witness who might have been called and cross-examined at the trial ought not to have any weight given to it. 16 W. R. P. C. 11.

DEPOSITION (In former suit.)

216. B. M, as the widow of H, and adoptive mother of the minor S, brought a suit against M. M, describing her as the widow of R. N, ignoring the existence of D. N. (an adopted son of R. N.) in whom was vested the interest of the property of which M M, was only a manager.

Subsequently, after D N's death, M M adopted an another infant N. N. and on his behalf, as the expectant successor, on the death of B M, to the property of H, brought a suit against B M for a declaration of the invalidity of the adoption of C. K.

Hold that the latter suit was not between the representatives in interest of the parties in the former suit, and a deposition made in the former was not admissible in the latter. 23 W. R. 42.

217. A deposition of a person in a suit to which he was not a party, is, in a subsequent suit in which he is a defendant, evidence against him and against those who claim under or purchase from him, although he is alive and has not been called as a witness. S. 33 of the Evidence Act. 1 of 1872 does not apply to such a deposition, but it is admissible under the sections relating to admissions, although it might be shewn that the facts were different from what they were stated to be in the former case.

A statement in a bill of sale is evidence against those who are parties to it. 14 B. L. R. App. 3.

DEPOSITION (Of Cazee).

218. The deposition by a Cazee of the vendor's admission to him of a sale and receipt of the consideration, together with the conduct statements of the parties, from legal evdience of the sale as the vendors. 5 W. R. 175.

DEPOSITION (Of serving Peon.)

219. The deposition of a serving peon on oath is evidence, but the report of the Nazir not being upon oath or on anything on which perjury can be charged, is not evidence. 18 W. R. 197.

DEPOSITION (Of Witnesses.)

220. Depositions of witnesses in a former suit are not admissible in evidence when those witnesses are living, and their oral evidence is procurable. 2 B. L. R. App. 4.

221. Where there is conflict between a Judge's memoranda of

evidence and the recorded deposition of the witnesses, the Court must be guided by the latter. 15 W. R. 375.

222. To enable an appellant in special appeal to succeed on the grounds that the depositions of his witnesses were not recorded, he must show that application was duly made that they should be summoned, or that, being present, application was duly made for their examination. 2 N. W. P. 209.

223. Where a Commissioner took the evidence of witnesses after the last returned day of the Commission had expired, it was held that the depositions of the witnesses were not admissible in evidence in the cause. 14 W. R. 17.

224. Under S. 33 of the Evidence Act, depositions of an absent witness are only admissible when the prisoner has had the right and the opportunity to cross-examine. 21 W. R. Cr. 12.

225. Before a Sessions Judge can, under S. 33 Act I of 1872, admit the depositions of witnesses given in a former judicial proceeding as evidence before him instead of and in place of the oral depositions of the witnesses themselves, it ought to appear that the presence of the witnesses could not be obtained without an amount of delay or expense which the Court considers unreasonable; and if there is nothing of a special nature to stand in the way, the case should be adjourned to the next Sessions to procure the attendance of the witnesses. 21 W. R. Cr. 56.

DEPOSITION (Taken by Ameen).

226. The depositions taken by an Ameen may be read as evidence when the case comes back to the Court again. 22 W. R. 350.

DISCREPANCIES.

227. Discrepancies are not less infirmative of testimony, because a greater sagacity on the part of witnesses would have avoided them. 11 B. H. R. 149.

228. Discrepancies in an account of what took place in a conversation are not a sufficient ground for disbelieving statements made by different witnesses. 3 B. L. R. A. J. 332.

229. In the case of a statement made by one of plaintiff's witnesses, the question is not whether it quite corresponds with the plaint; but whether it is worthy of credit and substantially agrees with plaintiff's case. 22. W. R. 271.

230. Where a Lower Appellate Court disbelieved a plaintiff's story as a whole on account of discrepancies which affected a part only of his allegations, it was held to have used a discretion which it had a perfect right to use and which could not be interfered with on special appeal. 11 W. R. 307.

DOCUMENT.

231. Documents should not be used as evidence where they are at best statements made by a person who is alive and who may be called as a witness. 22 W. R. 213.

232. Attention drawn to the neglected provision of the Code of Civil Procedure, which prohibits Courts from receiving on the record of a case, without restriction and without discrimination, documents which are either irrelevant or inadmissible. 11 W. R. 576.

233. Where a document is found, on independent evidence, to have been in existence long prior to the institution of the suit, and also to be genuine, it is not necessary to insist on the testimony of subscribing witnesses. 10 W. R. 340.

234. A Civil Court is not bound to adopt the view of a Magistrate as to the genuiness or otherwise of a document. 5 W. R. 26.

235. A Court cannot be said to have received documents as admissible in evidence, when for want of time to inspect and consider them, it orders them to be filed; nor would it be wrong in law in rejecting or returning them after proper inspection; the objection of section 129 Act VIII of 1859 being that papers should be produced in a regular manner, and inspected by a Court at its convenience. 11 W. R. 350.

236. Where a Judge is influenced in his estimate of parol testimony by the result of his consideration documents, which he ought not to have dealt with as evidence, there is no proper trial of the case. 9 W. R. 274.

237. At a trial, certain documents contained in the schedule to the answer of the defendants to a Bill of discovery filed in equity were read as evidence for the plaintiff, but the Court refused to allow the defendants to read the answer to which the schedule was annexed. Held, that as the Supreme Court of Calcutta, being Jurymen as well as Judges, had refused to allow the answer to be read, or the ground that such answer contained nothing material to the issue which could influence their verdict, a new trial on the ground of such refusal would not be granted. 5 M. I. A. 44.

DOCUMENT (Added to evidence, but still partially genuine).

238. A document found to have been subsequently added to, yet in some degree accepted, as genuine, is not inadmissible in evidence. 2 [illegible] R. 231.

DOCUMENT (Admission of).

239. With reference to the laxity prevailing in the Indian Courts in admitting documents. The Privy Council remarked that whilst it might not be desirable in all cases to apply strict and technical rules to the admissibility of evidence in the Courts in India, the substantial principle on which the authenticity and value of all evidence rest should be served. 17 W. R. P. C. [illegible]

DOCUMENT (Admission or rejectin of.)

240. A Civil Court is not bound to admit or reject documents because they have been admitted or rejected by a Revenue Court. 5 W. R. 186.

DOCUMENT (False.)

241. The production of a false deed does not necessarily nullify other evidence. 3 W. R. 57.

DOCUMENT (Filed in another case.)

242. Where a plaintiff had ineffectually put in an application before trial, praying that the documents filed in another suit might be used for the purposes of this case (which application was not refused by the Court), Held that to put in such a petition and not to tender documents at the trial is but laying a trap for the Court and cannot afford ground for complaint if the suit is dismissed. 24 W. R. 136.

DOCUMENT (Filed in Criminal case).

243. Documents filed in a case under Section 318 old Code of Criminal Procedure, cannot be accepted as evidence in a suit before a Deputy Collector. 11 W. R. 171.

DOCUMENT (Forged).

244. Judgments of the Lower Courts, holding that two documents set up by the defendants under which they claimed to hold as *jotedars* were fabrications,—upheld. 16 W. R. P. C. 9.

245. The production of a forged document in evidence by a party to a suit, does not exempt the Court from a full examination of the whole evidence adduced. 3 W. R. Act X. 149.

246. If a party put in evidence in support of his title, documents proved to be forged, but the other evidence adduced by him is not impeached, the Court, in rejecting the forged documents, will take the impeached evidence into consideration, and if satisfied, adjudicate thereon. 10 M. I. A. 151.

247. When false witnesses or forged documents are produced to port a case, such fact naturally creates suspicion ; but if the Appellate Court has to deal with a just case, though foolishly and wickedly attempted to be supported by false evidence, such circumstance will not prejudice the judgment on the merits, when the case is supported by independent evidence.

So ruled, when Their Lordships were satisfied from the evidence that an ancient tenure existed, which was endeavoured to be supported by a forged document and evidence. 19 M. I. A. 123, 124.

DOCUMENT (Not on Record).

248. A Judge ought not to deal with a case on documents not forming

a part of the record, *e. g.* decisions in other cases not filed in the case. 19 W. R. 299.

DOCUMENT (Old).

249. With regard to the proof of ancient documents the proper rule is, that if they are more than thirty years old they need not be proved provided they have been so acted upon or brought from such a place as to offer a reasonable presumption that they were honestly and fairly obtained and preserved for use and are free from suspicion of dishonesty. 5 B. H. R. A. J. 135 ; 6 B. H. R. A. J. 90.

The rule of the English Law of Evidence, which dispenses with formal evidence of the execution of a document more than 30 years old, assuming it to be applicable to the Courts of this country, does not apply to a case in which it is not shown in whose custody the document had been kept ; and even then the Court could reject the document if it thought it to be a fabrication. 6 W. R. 82.

251. The English rule that a document more than 30 years old, if free from suspicion of dishonesty, may be admitted as evidence without proof of the execution or writing, was held to be founded on a reason which had less weight in this country, where less credit should be given to ancient documents which are unsupported by any evidence that might free them from a suspicion of being false or fabricated. Even in England, such evidence unsupported was held to be of very little weight. Accordingly it was not allowed to prevail here in a case in which there was other evidence inconsistent with the title which those documents professed to create. 18 W. R. 485.

252. A document 30 years old does not prove itself, in the absence of evidence, that it has come from the proper custody. 3 B. L. R. A. J. 258.

A document more than 30 years old, although not requiring to be formally attested by the witnesses who attended at its execution, must be shown to have come from the custody of the person who would have been the proper person to keep it.

Where a co-sharer enters into an arrangement (without consideration) agreeing not to sell his share except to his co-parceners, and then sells it to a stranger who is no party to that agreement, the other parties interested are not authorized to have the sale set aside or to do anything more than recover damages from the recusant shareholder. 24 W. R.

½. Mere absence of attestation cannot be fatal to the admission of a document purporting to be of a very ancient date, and coming from the proper custody.

No Court, much less an Appellate Court, is justified in relying that, in the absence of documentary evidence, mere oral evidence is not sufficient to prove the plaintiff's case, when the plaintiff adduced 11 witnesses whose testimony was fully believed by the first Court. 18 W. R. 512

255. Where a party offers documents of such an age as to be incapable of being proved by direct evidence, he is bound to prove their custody. 12 W. R. 473.

Where a sunnud bearing a seal and purporting to be upwards of 30 years old was tendered as evidence but was not admitted by the opposite party; held that the party tendering it ought at least to have adduced such evidence as he was able of custody and of payment of rent or other acts done according to its terms. 21 W. R. 279.

257. Even where a deed or other document is so old that it is not sonable to expect proof of the *factum* of its execution, its authenticity must be made out in some reasonable way; the usual method being parol mony as to the facts of its custody. 21 W. R. 19.

Where a document, which is not proved because of its , and of there being no witnesses to prove it, is put forward as a document intended to operate as a mirasi tenure, it is necessary in order to establish its authenticity to show that it was accompanied by possession. 21 W. R. P. C. 22.

259. To establish the authority of a document so old that the witnesses to its execution cannot reasonably be expected to be in existence, it is not necessary to go behind the possession of the present owner. If the custody from which the document comes into Court has been and is the custody in which, judging from the purport of the document itself and the other circumstances of the case, it would naturally be expected to reside then the document ought to be treated as authentic to such extent as to be admissible in evidence between the parties. 13 W. R. 110.

260. When a document is so old that the parties to it and the witnesses have, in all probability, passed out of this world, and evidence cannot be produced to prove the *factum* of its execution, the rule in England as well as in this country is to compel the party who relies upon the document to show that it comes from the custody in which it would naturally be expected to reside, were it a real and authentic document. 10 W. R. 1.

261. A Judge may lawfully employ a former decision for the purpose of showing that documents which bear such a distant date that their attestation or proof in the usual form is impossible, had been used publicly on a former occasion in the same Court when they had been found to be authentic. 11 W. R. 3

Held that, before a document, of whatever age it may be, be put in as legal evidence, there must be sworn testimony as to the from which it has come. 12 W. R. 90.

The fact of a *pottah* being more than 30 years old was held not to do away with the necessity of proof before it could be used as evidence. 10 W. R. 237.

264. Held that the Subordinate Judge was bound to consider the intiff's *pottah* and *amulnamah* as evidence in this case, they being both very old documents, and found in the possession of the party who, in the natural course of things, would be their custodian; and that he , before *deciding* against the plaintiff's evidence, to have insisted the attendance of one of the parties, who had been cited by them as witnesses, but who had refused to attend. 17 W. R. 346.

265. Where a document purported to be 45 years old, and a *mohurir* swore to its having been in his custody as keeper of plaintiffs' records for the time of his service, the evidence was held to show (if credible) that the document had come from proper custody within the meaning of Act I of 1872. section 90, and to require no direct evidence of its genuineness. 21 W. R. 45.

266. Where a *kabalah* upwards of thirty years old was produced from proper custody and offered in evidence, but rejected by the Lower Appellate Court as not genuine, because evidence had not been given that it had remained in the custody of the parties after the death of their father, and because it had not been filed in any public office, and no mention made of the purchaser in the mofussil or at the Sudder Station: Held that it was erroneous to require such proof, and to overlook the evidence of possession under the *kobalah*. 21 W. R. 130.

267. Per Baley, J.—The omission in the first Court to enquire or specify in the judgment as to whether a *pottah* which is admittedly 100 years old and which is actually supported by the evidence of old witnesses, comes from proper custody or not, is not a sufficient reason to invalidate the finding that the *pottah* is proved; nor is it a defect in the investigation affecting the merits of the case which, would justify the interference of the High Court in special appeal.

Per Glover, J.—The question as to proper custody is not in issue, the Judge having found the *pottah* proved by evidence of witnesses. 17 W. R. 280.

DOCUMENT (Production of—after time).

268. Where *kushrah* papers which formed the very essence of the action were not filed or produced by the plaintiff within the time prescribed by law, the Court of first instance was held to have been justified in rejecting them when subsequently tendered as evidence. 18 W. R. 515.

DOCUMENT (Production of—of recent date).

269. The mere production of a document of recent date is not proof of the genuiness of such document. Before receiving it, the Court must decide whether, upon the evidence adduced, the party seeking to put the document in evidence has given sufficient legal proof of its being what it purports to be. 5 W. R. Act X. 12.

DOCUMENT (Proof of).

270. In order to prove legally the execution of a document of which

a copy only is on the record, it is not enough for the witness to that he executed a document of that nature, the purport of the must be read to him and he must be asked whether the original of the same was what he executed. 13 W. R. 429.

271. It is not necessary for a party who desires to prove a document, to call the writer of it, if alive, as a witness, so long as he can give other satisfactory proof of its execution. 12 W. R. 30.

DOCUMENT (Sent for by Court).

272. A suit for arrears of rent under a *Kabooleut*, the execution of which was denied by defendant, having been decreed in favour of plaintiff, an appeal was preferred to the additional Judge, who sent for copies of two documents, (previously filed by defendant in the Assistant Magistrate and Registrar's offices respectively), which neither of the parties had put in the Court below, and used them as evidence in favour of the defendant. Held, that neither of the documents could be properly used as evidence between the parties to this suit except for the purpose of cross-examination of witnesses in the Court of first instance, and that the use made of them by the Lower Appellate Court was unfair to plaintiff and caused a mistrial. 10 W. R. 92.

DOCUMENT (Registered).

273. The circumstance that a copy of a document has been obtained from the office of a Registrar of deeds does not make that registered document evidence, or render it operative against the persons who appear to be affected by its terms. 21 W. R. 265.

DOCUMENT (Unregistered).

274. A Lower Appellate Court was held to have done wrong in giving effect to an unregistered bond which by reason of its not having been registered was not admissible as evidence under the provisions of the Indian Registration Act, even though it was not specifically objected to in either of the Courts below. 19 W. R. 23.

DOCUMENT (Unstamped).

275. The want of stamp in a document admitted as evidence, where the error of receiving it unstamped did not affect the merits of the case, is not a ground for reversing a decision. 11 W. R. 520.

276. Where unstamped receipts, which might have been properly rejected by the first Court, have been filed there and accepted as evidence, an Appellate Court is bound to consider them as evidence in the case, and the decree of the Court of first instance cannot be reversed or modified for want of the stamps. 12 W. Mis. R. 47.

E.

ENDORSEMENT.

277. The mere absence of an endorsement on the back of a *dee* cannot prevail against positive proof of payment. W. R. Mis

In a suit to recover an overpayment of a mortgage claim, an unsigned and unregistered endorsement of such payment made by the mortgagee (defendant) on the registered mortgage bond was tendered as evidence of such payment : Held, that the endorsement was admissible as confirmatory evidence of the sum received by the defendant notwithstanding the want of signature.

Held, that as mere confirmatory proof of a fact proveable by oral evidence although stated in writing, the endorsement was admissible, although not registered. 7 M. H. R. 1.

279. In a suit for possession of certain lands, for satisfaction of a *thakbust Map*, and reversal of an Act X. decision, the plaintiffs obtained a decree in the Court of first instance, the Lower Appellate Court, and subsequently in the High Court on appeal. It appeared that the Lower Courts had before them an incorrect copy of the *Thakbust Map*, the original forming part of the record of another suit. The High Court on appeal refused to send for this *Map* ; but subsequently, on review, it was sent for. There was an endorsement on the back, which did not appear on the copies originally before the Court, to the effect that the lands in dispute were pointed by one T. C., acting as agent for the plaintiffs, to be measured as belonging to the defendent's talook. Held, the case must be remanded to the Lower Appellate Court to determine (1) whether T. C. was the agent of the plaintiff ; (2) whether, acting within the scope of his authority as such agent, he did sign the *Map* as a correct *Map*, and pointed out the lands as belonging to the defendant ; (3) and if so, how far these acts of the agent were binding on the plaintiffs. 3 B. L. R. A. J. 377.

ENDOWMENT.

The mere fact of the proceeds of any land being used for the support of an idol may not be proof that those lands formed an endowment for the purpose ; but where there is apparently good evidence going back for more than half a century that the land was given for the support of an idol, proof that from that time the proceeds had been so expended would be strong corroboration. 8 W. R. 43.

ENDOWMENT(Proof of).

281. The mere fact that a portion of the profits of land in the possession of a party had been for some time used for the worship of an idol is no proof of an endowment, and cannot impose on such party the liabilities attaching to the office of a *shebait*. 18 W. R. 399.

ENTRIES (In Jummabundee Records).

282. Entries in Jummabundees, and in similar records, should be supported by independent evidence. 1 N. W. P. 16.

ENTRIES (In Nazir's Book).

283. Under Section 4 Act II of 1855, a Court is entitled to refer to entries made by its own officer the *Nazir*, and find thereon that a warrant

been issued in accordance with an application admitted to have been made. 8 W. R. 277.

ERROR OF LAW.

284. A complete disregard of evidence which, although not conclusive and an estoppel, is of such a nature that a judgment in opposition to it cannot be allowed to stand: it amounts to an error in law. 23 W. R. 65.

When a Judge decides without legal evidence, he commits an error in law. 9 W. R. F. B. 33?

286. It is an error in law to reject the evidence of weavers simply because they are weavers by caste, or to accept the evidence of witnesses who are cultivators because they are cultivators. 17 W. R. 161.

287. It is a ground for special appeal, if the Appellate Court disregards one side of a case, and turns its attention exclusively to the evidence on the other; but it is no error of law merely to pronounce no objection upon the evidence on the former side. 24 W. R. 300.

288. The improbability of plaintiff having received payment for one bill whilst another and older one remained unpaid, was no reason for the Judge refusing to consider the evidence adduced by plaintiff in support of her demand, and his not having done so was held to be an error of law.

So also the Judges having entirely ignored the evidence with regard to an entry in the plaintiff's day-book on which the first Court decided the case, was held to be an error of law in the investigation and a proper subject for special appeal. 18 W. R. 53.

289. In a suit for possession by a lessee, where evidence was erroneously rejected by reason of a total misconception of the position of plaintiff's lessor, and such rejection affected the decision of the case on its merits the error was held to be an error in law. 17 W. R. 255.

290. The Court saw no ground for saying that there was any error of law in the Lower Court, when it found that a decree was made in 1843, and that the amount of rent stated in it had never been paid, but that for twenty years subsequent to the decree a reduced rent had been paid, coming to the conclusion that the decree had been abandoned by the parties or treated by them as a matter which was not to regulate the amount of the rent. 17 W. R. 418.

291. In a suit for ejectment on the ground that defendant was holding over after the expiration of his lease, defendant's vakil deposed on oath in the first Court that defendant had no documents whatever and that those he once had were burnt. When the case came before the Subordinate Judge in appeal, he permitted the defendant to file a new piece of evidence, *viz.* a pottah which was alleged to have escaped the general destruction.

Held that the admission of the pottah on the mere *ipse dixit* of the defendant was a substantial error in law, even though plaintiff neither admitted nor denied the document: that the Subordinate Judge had no right to admit the pottah under the circumstances; and that if he had, he was wrong in deciding the case upon it without taking evidence as to its genuineness. 19 W. R. 88.

292. The mere fact of a vendor declaring in her deed of sale of a moiety of a landed estate that she was the proprietor only of that moiety and that the other moiety belonged to her deceased sister's son, was held not to be conclusive evidence against her being proprietor of the other moiety nor to injure the right of a purchaser from her of such moiety. 13 W. R. 2.

EVIDENCE.

293. The observation that the evidence of a witness proves too much is not rebutted by the suggestion that it cannot be supposed that the witness was suborned, for, if he was possessed of common shrewdness, he would not have overdone the thing and thus have given rise to such an objection. 5 W. R. P. C. 127.

294. It is for a party to adduce his own evidence, and not for the Court to ask him to do it. 12 W. R. 470.

295. By Section 10 of Bengal Reg. XXVI. of 1814, the *Sudder Ameen* is bound to record a proceeding specifying the points at issue, and to call for evidence for and against the claim. 5 M. I. A. 271,272.

296. It is not the business of the Court which has to deal with facts to take up *seriatim*, one by one, the different portions of the evidence. What it has to do is to take the evidence in all its parts, consider the bearing one part has upon another, and see whether taking the whole together a case has not been made out. 19 W. R. 213.

297. Held that the applicant had a right to establish what the law required by any evidence sufficient for the purpose, and that the Court had no power to require from him any particular kind of evidence. 22 W.

298. Even if the evidence upon the record is in itself insufficient, a Judge may properly decide the case upon that evidence, if the defendant consents to its being taken as sufficient. It is the duty of the party who wishes to object to evidence, to object in the first instance, and not to delay doing so until the case is before the High Court in special appeal. 12 W. R. 245.

299. The consideration of a case upon evidence can seldom be satisfactory, unless all the presumptions for and against a claim arising on all the evidence offered, or on proofs withheld, on the course of pleadings, and tardy production of important portions of a claim or defence, be viewed in connextion with the oral or documentary proof which might suffice to establish it. 5 W. R. P. C. 55.

300. In questions of disputed facts, the rule of the Judicial Committee is, that the ordinary legal and reasonable presumptions of facts must not be lost sight of in the trial of Indian cases, however untrustworthy much of the evidence submitted to the Courts below may commonly be; that due weight must be given to the evidence, and that evidence in a particular case must not be rejected from a general distrust of native testimony, nor perjury widely imputed, without some grave grounds to support the imputation, as such a rejection would virtually submit the decision of the rights of others to the suspicion, and not to the deliberate judgment of the Judge. The entire history of a family must, therefore, not be thrown aside because the evidence of some of the witnesses is incredible or untrustworthy. 14 M. I. A. 346.

301. In estimating the value of evidence, the testimony of a person who swears positively that a certain conversation took place is of more value than that of one who says that it did not. 6 W. R. 55.

302. In a suit, which involved a disputed question of fact as to an alleged adoption and the due execution of a Will, the Courts in India disregarding other evidence, relied solely upon the evidence of a witness examined at the instance of the Court itself. The effect of the evidence of this witness was to show that at the time of the adoption and execution of the Will, the alleged Testator was in a dying state, and, although at times roused to consciousness, was, from his enfeebled mind, incapable of understanding the acts he was represented to have performed; the Court below, however, upon the evidence of this witness, as to his testamentary capacity, corroborated, as it thought, by a letter of the widow of the alleged Testator, recognizing the adoption, and by her acquiescing in the performance of certain funeral rights of her deceased husband by the supposed adopted son, pronounced both the adoption and the Will to be valid. Upon appeal, held, that although as a general rule, in a question of fact, the Judicial Committee were unwilling to disturb the judgment of the Court below, yet that as it was the duty of the Appellate Court to weigh the evidence and probabilities, and form an independent judgment, and taking into consideration the evidence regarding the state and capacity of the alleged adopter and Testator, they were of opinion, that the evidence relied upon was so unsatisfactory, that neither of the decrees of the Courts below could be supported, and reversed the same with costs. 10 M. I. A. 429.

303. Where it is manifest that the Lower Appellate Court has dealt with the evidence adduced on both sides, has weighed it, and come to the conclusion that the plaintiff's witnesses ought to be believed, the giving in the course of its observations a reason which may not be considered a good one is not a ground of special appeal. 18 W. R. 110.

304. Where it was found in special appeal that the Lower Appellate Court, after considering the evidence of the witnesses in detail and giving its reasons in detail for rejecting that evidence, had not met the judgment of the first Court in a single point, the decision of the Lower Appellate Court was reversed, and that of the first Court restored. 21 W. R. 135.

305. Where the evidence before the Lower Appellate Court was not sufficient in law to justify that Court in giving a decree for rent in excess of the amount decreed by the first Court, the High Court in special appeal ordered it to be varied by making it accord with the decree of the first Court. 23 W. R. 149.

306. In a suit to set aside a summary award under section 246, Civil Procedure Code, a Judge is bound to find facts upon the evidence tendered and taken in the case, and not upon any evidence taken in the summary cause. 14. W. R. 96.

Court of first instance ought not, because it is satisfied upon the evidence which one of the parties has given, to prevent him from putting upon the proceedings all the evidence that he wishes to give, so that he may have his case brought fairly before the Appellate Court. 23 W. R. 63.

308. Where the evidence is accepted by a Subordinate Judge as sufficient to warrant a decree, and the case is only remanded for a defect of parties, his successor is justified, when the case is returned by the first Court, in respecting the former judgment and looking upon the evidence as *prima facie* good and sufficient. 14 W. R. 380.

309. In this case the Privy Council, after a review of the evidence, held that the plaintiffs (respondents) had failed to prove either title or possession, so as to entitle them to disturb the long possession of the defendants (appellants) ; observing that, if Their Lordships had been sitting as a Court of first instance, they would have deemed it impossible, upon such proof of title as the plaintiffs had given, to disturb an admitted possession of upwards of ten years. It seemed to Their Lordships that the High Court, having originally treated the title of the plaintiffs as depending upon a release by the Judicial Commissioners, and finding that the release was not made out, fell back upon a proceeding of the Deputy Collector, and had not given sufficient consideration to the nature of the proceedings of that subordinate officer, and the manner in which they were dealt with by his official superiors. 18 W. R. P. C. 91.

EVIDENCE (Additional).

310. The parties in an appeal are not entitled as of right to put in additional evidence. The Appellate Court may allow additional evidence in certain cases ; but a special appeal will not lie in the event of the Court refusing to allow it. 7 W. R. 489.

311. Where there is sufficient evidence of a fact, it is no objection to the proof of it that more evidence might have been adduced. 1 W. R. P. C. 25.

312. It is incumbent on a Court taking additional evidence under section 355 Act VIII of 1859, to record its reasons for admitting such evidence, but such record is not a condition precedent to the reception of fresh evidence. 11 W. R. 47, 48.

313. A decree-holder, having sold in execution the property of his

judgment-debtor (D), became himself the purchaser and sold it again to plaintiff. Plaintiff on going to take possession found defendant there, who claimed under a mokururee pottah granted by D and denied plaintiff's title to any thing but the rent. Plaintiff sued for khas possession. The Lower Appellate Court gave plaintiff a decree after calling in D as a

Held, that the Lower Appellate Court should have stated most fully and clearly its reasons for calling for fresh evidence but that, in point of law, it was sufficient if that Court considered the matter and stated that such reasons existed without mentioning what they were.

Held that the Lower Appellate Court committed as grave and material error in considering D's evidence a conclusive on the point of the genuineness of the mokururee pottah set up by defendant and that it was just as necessary to weigh the value of his testimony as that of any other witness. 12 W. R. 245.

EVIDENCE (Admissibility of.)

314. The rules with regard to the admissibility of evidence are not to be observed with the same strictness in proceedings in the mofussil Courts in India as in the Courts in England. 7 M. I. A. 128.

315. A decree for rent is admissible in evidence against a defendant to prove the rate of rent he was liable to pay, although the decree has not been executed for three years, and has therefore become

under the law of limitation. 14 B. L. R. F. B. 370.

Held, (Mitter J. dubitante) that when a witness says that a party is in possession of land, that in point of law is admissible evidence of the fact that such party was in possession. 13 W. R. F. B. 42.

317. Where no objection had been taken as to the admissibility of documentary evidence, viz., a decree, and other proceedings in regard to that decree had been made use of by the opposite party, an Appellate Court has no jurisdiction to exclude it. 3 B. L. R. A. J. 214.

318. Where evidence, such as hearsay, is improperly admitted, the question for the Judicial Committee is whether, rejecting that evidence, enough remains to support the finding.

Disapproval was expressed by Their Lordships of the reception by the Lower Court of evidence which ought not to have been admitted. 6 B. L. R. P. C.

EVIDENCE (As opposed to suspicion).

319. The *Sudder Ameen* having held an adoption proved, the Principal *Sudder Ameen*, on appeal, reversed that decision on the facts. The case came before the High Court on special appeal and the decision then given was appealed to England, and special leave was given by Her Majesty to appeal against the decision of the Principal *Sudder*
The decision of the High Court on the law was admitted to be g
the Judicial Committee reversed the finding of the Principal
on the facts.

, though unregistered (registration not being compulsory), when by all the attesting witnesses, and against which there is no evidence on the other side, ought not to be set aside on mere suspicion of perjury and forgery. 6 B. L. R. P. C.

EVIDENCE (Before Appellate Court).

320. Where the plaintiff himself is present; the Lower Appellate Court may in its discretion examine him, if it considers his evidence material. The requirements of the law are sufficiently fulfilled if the Court records that it considers his examination necessary. 13 W. R. 328.

321. Where a party has been prevented in the first Court, and the evidence on the record is not deemed sufficient by the Appellate Court, the latter Court does wrong if it refuses to receive the evidence which has been excluded in the way indicated. 23 W. R. 63.

EVIDENCE (Circumstancial).

322. In dealing with questions of fraud there is no reason why circumstantial evidence should not be acted upon, if it is sufficient to overcome the natural presumption of honesty and fair dealing and to satisfy a reasonable mind of the existence of fraud by raising a counter-presumption. 11 W. R. 482.

EVIDENCE (Cogent).

323. Evidence of possession and enjoyment for a series of years is of itself, if unanswered, cogent evidence of title. W. R. S. N. 243.

EVIDENCE (Collateral).

324. Section 38 Act X. of 1859 relates to the filing of documents forming the basis of the plaintiff's claim, and not of mere collateral evidence. 1 W. R. 263.

EVIDENCE (Conflicting).

325. There is no better criterion of the truth, no safer rule for investigating cases of conflicting evidence where perjury and fraud must exist on the one side or the other, than to consider what facts are beyond dispute, and to examine which of the two cases best accords with those facts, according to the ordinary course of human affairs and the usual habits of life. 5 W. R. P. C. 26.

EVIDENCE (Documentary).

326. The rules which regulate the conduct of cases in the mofussil Courts do not necessitate the proving of documents which are not disputed. 16 W. R. 8.

327. When a document is tendered in evidence, the Court has no right, without distinctly deciding whether it is or is not proved to be [illegible], to decline to receive it for the mere general reason that it may or probably be a forgery. 10 W. R. [illegible]

Documentary evidence should not be summarily rejected for

want of legal proof, unless the party producing it understands the nature of the proof required, and has had an opportunity of producing it. 3 W. R. Act X. 169.

329. Documentary evidence tendered by a plaintiff cannot be rejected merely because it had not been adduced in a former suit to which plaintiff was a party. 9 W. R. 381.

330. Documentary proof is not absolutely necessary to prove an endowment. 8 W. R. 43.

331. Courts of first instance ought to specify what portion of the documentary evidence on the record they have accepted, and what portions they have refused to listen to. 21 W. R. 77.

332. All the proceedings of the parties in respect of the use of documentary evidence are matters to be recorded on the proceedings of the Court by the Judge's own notice. 21 W. R. 77.

333. The best evidence in support of a deed of gift are the witnesses to its execution or its custody; it is not necessary to support it by documentary evidence. 10 W. R. 262.

334. When a Lower Court dismisses a suit on the ground that the documents on which the plaintiff based his title were not authentic and genuine, it is incumbent on the Lower Appellate Court, before giving the plaintiff a decree, to find whether the documents in question were authentic and genuine. 6 W. R. 64.

335. The latitude with which documentary evidence is received in the Native Courts in India observed upon, and such practice condemned, as involving unnecessary costs, the administration of justice requiring that the admission of documents should be strictly conducted with reference to the principles regulating the admission of evidence. 7 M. I. A. 148; 4 W. R. P. C. 128.

336. A mistake made by a Lower Court in admitting or rejecting documents as evidence is not sufficient to warrant a case being sent back for a new trial, unless the mistake has really or materially affected the decision upon the merits. 24 W. R. 392.

337. Where two sets of *jumma-bundee* papers put in by parties to a suit are such that either would be inadmissible if objected to by the opposite party, each party by insisting on his own papers bars himself from objecting to those of his adversary. 18 W. R. 502.

338. Held, that a Lower Court in taking evidence ordered under section 355 Act VIII of 1859, acts in a ministerial capacity; that a defendant may raise any objections he pleases to the documentary evidence adduced by the plaintiff when it is submitted for the consideration of the

339. Where a plaintiff sued for damages for value of timber carried away by Government after being washed on to his estate, and to have his right declared as against Government to all timber that in the future may be washed on to his estate. Held, that the suit was not one which was cognizable by a Court of Small Causes. Held further that it was not necessary for plaintiff to produce documentary evidence in support of the right, or some decree or decision of competent authority establishing the custom. Lords of Manors are allowed to establish rights to wrecks, &c., by long continued and adverse assertion of, and enjoyment under, such claim; and the plaintiff was entitled to have the question tried by the evidence he had adduced. 9. W. R. 97.

EVIDENCE (Ex-parte).

340. Evidence taken in the absence of a defendant at an *ex-parte* hearing, cannot be used against him on a re-trial. 12 W. R. 130.

EVIDENCE (Extrinsic).

341. Extrinsic evidence may be received to identify the thing referred to in a written agreement. 5 B. H. R. A. J. 87.

342. Where the words of an agreement are plain and unambiguous, they should not be explained away by extrinsic evidence, and still less by mere reasoning from probabilities. 1 M. H. R. 264.

EVIDENCE (For Rent.)

343. A decree in a former suit declaring the rent payable by a ryot is evidence of the rent still payable by him, unless rebutted by him by proof of change. W. R. S. N. 95.

EVIDENCE (Hearsay.)

344. The taking down of mere hearsay evidence in a case where hearsay is not admissible as evidence, condemned. W. R. S. N.

5. Hearsay or mediate evidence is admissible when the absence of other evidence is not accounted for as to subjects which cannot from their very nature admit of the production of immediate evidence, or when it tends to explain an act done and forms part of a particular transaction. 5 W. R. Act X. 30.

346. The defendant having stated his readiness to rest his case on the evidence of two witnesses, who, when called, gave testimony unfavorable to him,—Held that the Court was not bound to adopt or act upon their evidence which was inconclusive and chiefly hearsay. 5 W. R. 234.

347. Where the High Court founded their judgment upon evidence which did not justify the conclusion, the Judicial Committee reviewed the whole evidence, in order to ascertain whether the decree could be supprted.

On an inquiry as to the fact of lunacy under Act XXXV of 1858, finding as to the actual time when the lunacy begun is beyond the juris-

diction of the Judicial officer making the enquiry. Where the fact of lunacy was admitted, and the question was the date at which it commenced, the evidence of a planter in the neighbourhood as to common reports for years in the village as to the lunacy having been admitted by the lower Court, the Judicial Committee refused to reject it. 6 B. L. R. P. C. 509,510. (7 M. I. A. 137) *Followed.*

EVIDENCE (How to be recorded.)

348. It is incumbent on the Principal Sudder Ameen, even if he does not take down the whole of the evidence in his own hand-writing, which, every English Judge should, to record every material answer made by the witness in the examination-in-chief, the cross-examination, and in reply to questions put by the Court. The substance of these answers should not be taken down in the columns of a statement, but should be written down as witness's evidence is ordinarily written, in consecutive sentences. The Principal Sudder Ameen should also distinguish between the evidence given in answer to the questions of the vakil who conducts the examination-in-chief, and that given in answer to the cross-examination. 6 W. R. 112.

EVIDENCE (Improper Reception of.)

349. The improper reception of evidence does not necessarily make the evidence no evidence at all; nor does it warrant reversal of the Lower Appellate Court's decision if justified by sufficient evidence independently of the evidence improperly admitted. 14 W. R. 20.

EVIDENCE (Inadmissible.)

350. Where the Lower Appellate Court was influenced by an unproved *sunnud* and by *farkhuttees* similarly unauthenticated, the High Court reversed the decision and remanded the case for re-trial. 21 W. R. 279.

EVIDENCE (In another suit.)

351. A Lower Appellate Court was held not to be wrong in reading as evidence in the suit, evidence in another suit which had been read in the first Court, unless it was objected to. 10 W. R. 37.

EVIDENCE (In case of Adoption).

352. In a former *bona fide* litigation to which the defendant was no party, the status of the plaintiff as an adopted son was in issue and disposed of in his favour. Held that that was good evidence of the adoption in this case in the absence of better evidence for the defendant. 2 W. R. 168.

EVIDENCE (In Execution).

353. In the execution of a decree for the possession of land if it is found that the boundaries described in the plaint are no longer in existence, it is allowable to take the evidence of witnesses to ascertain their former position. 16 W. R. 171.

EVIDENCE (New).

On an appeal to the High Court, that Court, acting under the

power conferred by section 355 Act VIII of 1859, *exmero motu*, called for and examined fresh witnesses: Held that such power should be cautiously exercised, and the reasons for exercising it recorded or minuted by the High Court on the proceedings; as, *first*, the witnesses may be such as the parties to the suit do not wish to call; and, *secondly*, the new evidence may not be sufficiently extensive to satisfy the end of justice 11 M.I.A. 28.

355. Where new evidence is adduced in an application for review, it need not be *per se* sufficient to show that the previous decision is wrong or such as to cause an over mastering balance of evidence. If there is sufficient ground for receiving the new evidence, the case is to be heard as if it were being originally heard with the materials then before the Court. 22 W. R. 289.

EVIDENCE (Of Agent).

356. The evidence of a defendant's agent in the absence of defendant's own deposition though not full and complete is legal evidence. 15 W. R. 112.

(Of Applicant.)

357. When a party seeks the assistance of a Court in any case in which the best knowledge of the disputed facts is with himself, he is bound to place that knowledge before the Court with the sanction of an oath. 12 W. R. 422.

EVIDENCE (Of Defendant.)

358. There is no rule of law prohibiting a Court of Justice from receiving the evidence of a defendant in favor of his co-defendant. 10 W. R. 262.

Unless a defendant has subjected himself to cross-examination, no statement which he may volunteer can be used as any evidence in his own case. 16 W. R. 257.

EVIDENCE (Of Defendant on Commission).

360. A Court may legally refuse to hear read in evidence the deposition of a defendant taken by commission, where there is no evidence to prove that the defendant was from sickness unable to attend personally at the time of the trial, and the Court declines to dispense with the proof of such circumstance. 22 W. R. 331.

(Of Doubtful Admissibility.)

Where evidence of a doubtful admissibility has, under the loose practice of the Native Courts, been received, the Judicial Committee, as the Court of last resort, will deal with the case, as it appears to them, substantial justice requires, and will not allow any mere technical objection to prevail as to its admissibility. 13 M. I. A. 519; 15 W.R.P. C. 2.

EVIDENCE (Of Family Custom.)

362. In a suit to establish the existence of a family custom, the

tiffs offered in evidence a deed containing a recital that the custom of the family was, as alleged in the plaint, and a covenant to do nothing contrary to it. The deed was executed before action brought by the present plaintiffs, and also by a plaintiff who had died since the institution of the suit and, as the plaint alleged, by "a considerable majority" of the family, but the defendant was not a party to it: Held, that the deed was admissible as evidence on behalf of the plaintiffs, though they could themselves be called as witnesses; but that, though admissible, the custom as against the defendant must be proved *aliunde*. 10 B. L. R. 263.

EVIDENCE (Of Husband or Wife).

363. In a civil proceeding a husband or wife can give evidence for or against each other. 4 W. R. 83.

EVIDENCE (Of Loss).

364. In an action on a policy of insurance to recover the value of a portion of the goods insured lost by jettison, the protest of the Nakoda, and Custom House vouchers, showing that on the return of the ship to her port of sailing (being driven back by stress of weather), the goods alleged to have been lost were not on board her, are not sufficient as even *prima facie* proof of the loss. 1 B. H. R. 6.

In the case of a Native policy of insurance expressed to be "according to the usage of Maugrole," the certificate of the Mahajans at the port of distress or sale, if accompanied by the manifest of the shipment and the account-sales, is to be held sufficient evidence of an average loss and of the amount of such loss, though the underwriter may answer a claim supported on such evidence by showing fraud on the part of the shippers, the master of the vessel, or the *Mahajans*.

An alleged usage that the *Mahajans'* certificate is deemed to be conclusive evidence against the underwriter without production of manifest and account-sales, and that upon proof of the certificate *alone* and of the policy the owner is entitled to recover his average loss, cannot be upheld, such not being a reasonable usage. 1 B. H. R. 229.

EVIDENCE (Of Members of Family).

366. The evidence of members of the family would be the best evidence as to whether the parties were joint or separate; the account books would be simply corroborative. 10 W. R. 148.

EVIDENCE (Of Opposite Party's Witnesses).

367. In deciding a suit for the plaintiff, it is neither unfair nor inequitable for a Judge to use evidence which the defendant may have given, but which appears to the Court to be favourable to the plaintiff. 22. W. R. 271.

EVIDENCE (Of Title).

Evidence of possession and enjoyment is good evidence of title

as against the real owner duly where it has been undisputed and

369. In a suit for possession, if a party who claims to hold the land by a grant evidence by a *sunnud*, fails to prove the execution of the he is at liberty to prove the grant by other means. 11 W. R. 465.

title, evidence of the plaintiff's

to the summary award under section 15 Act XIV of 1859 under which he was dispossessed, may be good evidence of his title and must be considered. 7 W. R. 89.

EVIDENCE (On oath before Income Tax Officer).

371. The judgment of the Lower Appellate Court was reversed as erroneous in law, because it ignored defendant's evidence on oath before the Income Tax Officer as to the extent of his holding and because it nissed plaintiff's claim to the cesses on account of a trifling difference n the *jumma-wassilat-bakee* and *shushmahee* papers. 17. W.

INCE (Oral).

372. The very best description of oral evidence is absolutely necessary to support a claim for dower where no *Kabinamah* is produced. 7 W. R. 495.

373. Oral evidence, if credible, is legally sufficient to prove a prescriptive title. 7 W. R. 462.

374. Oral testimony, if worthy of credit, is sufficient without documentary evidence to prove a fact or a title. 8 W. R.

375. Oral evidence is alone sufficient to prove possession. 9 W. R. 15

376. Oral evidence is sufficient to prove boundaries. 9 W. R. 125.

377. Payment of a debt due on a *samadaskat* may be proved by oral evidence alone. 1 B. H. R. 11.

378. In a suit brought on an allegation of forcible dispossession, oral evidence, if credible and pertinent, is sufficient to establish the fact of possession. 8 W. R. 328.

379. Where a *puttah* is obscure, its meaning may be elucidated by oral testimony. 9 W. R. 567.

380. A written document may be explained by oral testimony. 1 W. R. 94.

381. The oral evidence of persons able from their position to testify as to certain lands being *mal* is not to be rejected as hearsay, when they depose that they have known the lands to be *mal* for many years and that defendant has been in the habit of paying rent for them. 10 W. R. 443.

382. More oral testimony is insufficient to prove possession of land

a documentary ev to, collection papers, &c.) which is the invariable concomitant of actual possession in country. 8 W. R. 341.

Verbal evidence is not admissible to vary or alter the terms of a written contract in cases in which there is no fraud or mistake, and in which the parties intend to express in writing what their words import, as for instance, to show that a deed of absolute sale was intended to operate as a mortgage (*Norman* and *Shumboonath Pundit*, J J. dissenting.) 5 W. R. F. B.

384. Oral evidence of the discharge of an obligation executed by writing is admissible. 2 M. H. R. 412.

385. Oral evidence is admissible to prove the existence of ment (*e. g.* a farming lease), and, if credible and sufficient of itself, will justify a Court in decreeing a claim. 12 W. R. 395.

386. In a suit for purchase-money, oral evidence is admissible to how the purchase-money has been apportioned. 7 W. R.

387. In a suit by A, on a bond in favour of B, the plaintiff may by oral evidence that the money secured by the bond was his own; but where B has died, A must either entitle himself as B's personal representative or make B's personal representative a party to the suit. 1 M. H. R. 452.

388. Oral evidence is admissible to prove that consideration has not been paid at all or in full, notwithstanding the recital in the bond that full consideration has been paid. 7 W. R. 428.

Verbal evidence is admissible to show that the name of the party used in a deed was only benamee for another person. 6 W. R. 191.

390. The adjustment of an account may be proved by verbal evidence; and need not necessarily be in writing signed by the party to be bound. B. L. R. F. B. S. V. 3.

Oral evidence may be received to prove that the consideration stated in a deed to have been paid was not paid, but not to prove that only a small portion of the consideration stated in the deed to have been received in full was to be paid at the time, and that the rest was not only to remain in abeyance pending the result of a suit, but to be paid only in case of the successful termination of that suit. 6 W. R.

392. In a suit for redemption of land mortgaged to the defendant, the plaintiffs relied upon a document as containing an acknowledgment of the title of the plaintiff under section 15 of the Act of Limitation XIV of 1859. The document contained an admission by the defendant that he held land upon mortgage in a specified district from the temple of which plaintiffs were the trustees:—Held, that oral evidence was admissible to apply the document to the land to which it was intended to refer. 5 M. H. R. 320.

393. Oral evidence, if believed, may be as good for proving title to land as documentary evidence. 10 W. R. 217.

394. Oral evidence is admissible in equity, where, by way of defence, the object is to get rid of a written contract of a sale of land by showing that it is not the contract really entered into by the parties; but the evidence must be very powerful to induce the Court to believe that the terms expressed are not the real ones.

Evidence of a contemporaneous oral agreement to suspend the operation of a written contract of sale until an agreement for a re-sale is executed is admissible as a defence even in a Court of Law. 2 B. H. R. 36.

395. A plaintiff who denies the execution of a document relied on by the defendant, and seeks to repudiate it altogether, is at perfect liberty to adduce oral evidence in support of his contention. 20 W. R. 184.

396. In the absence of any circumstance giving rise to a presumption that an alleged deed of absolute sale is a mortgage, a Civil Court is right in refusing to credit oral evidence to vary the express and unambiguous terms of the deed. 9 W. R. 251.

397. In this case the High Court, after pointing out the defects in the judgment of the Subordinate Judge regarding the identity of the lands in dispute, remarked on the omission of the Subordinate Judge to refer to the oral evidence and on an error frequently made by him in thinking that oral evidence not supported by documentary evidence, is of no importance whatever for the determination of the true merits of a case. 18 W. R. 323.

398. A Judge who was of opinion that oral evidence would be of no value without a *pottah* and *kabooleut* to prove the quantity of the defendant's *Nukdee kasht* land and the amount of its rent, was held to have mis-directed himself in point of law as to what was necessary in deciding the facts. 18 W. R. 348.

399. In a suit to recover possession of property said to have been mortgaged to defendant who denies the alleged mortgage, where plaintiff cannot produce the original mortgage-deed which (if in existence must be in defendant's custody) he may produce witnesses to speak to its contents. 10 W. R. 219.

400. Though a document may be explained by oral evidence, oral evidence is not admissible to vary the terms of the written instrument when the terms are in themselves clear and undoubted. Thus, where the question was whether a *ticca* lease for which a *kabooleut* was given was a portion of a larger mortgage transaction or not, and whether or not the suit upon the *kabooleut* was cognizable under Act X of 1859, as there was an interval of six years between the dates of the mortgage and the lease, and the lease was altogether silent as regards the mortgage and was not granted by the mortgagor to the mortgagee but by the latter to the former, the transactions were held to be separate and distinct, and the suit cognizable under Act X. of 1859 W. R. S. N. 22.

401. The rule that verbal evidence is not admissible to vary or alter the terms of a written contract is not applicable where the parties did not intend that the writing should contain the whole agreement between them ; and this may appear either by direct evidence or by informality in the writing. 14 W. R. 320.

402. Oral evidence is not admissible to set aside a deed of sale which, by its terms, is clearly absolute. W. R. S. N. 388.

403. Oral evidence of the deposit, if credible, is not sufficient. 3 W. R. 94.

404. Oral evidence of the contents of a decree of the original existence of which there is no clear proof, should not be admitted. 1 W. R. 212.

405. In a suit by a husband against his wife to recover property alleged to have been nominally sold by him to her, oral evidence was not allowed to be admitted to prove that no consideration ever passed between them, after he had solemnly in a written document admitted that it had passed. 7 W. R. 334.

406. Where a written instrument provided for a joint tenancy and joint contract by all the parties executing it to pay the whole rent of village without any reference to the quantity of land in the holding of each :—Held, that oral evidence was not admissible to show that separate specific contracts were entered into by each of the parties, and it made no difference that the evidence was put forward as evidence of a custom. 5. M. H. R. 135.

407. Oral evidence is not admissible to show that the parties did not intend that an absolute sale in writing should operate ; not as an absolute sale, but merely as a conditional sale, in order to defeat a right of pre-emption (Norman and Shumboonath Pandit, J. J., dissenting). 5 W. R. F. B. 76.

408. Possession as *lakherajdars* for a long series of years may be proved by oral evidence, notwithstanding the failure of documentary proof. 14 W. R. 109.

409. Where both plaintiffs and defendants rely upon a deed, the defendants especially claiming it as their own deed and being purchasers under it, the latter are bound by its terms, and cannot be permitted to set them aside by the testimony of witnesses. 11 W. R. 807.

410. In a suit to recover lands on an alleged title by purchase, the High Court declined to interfere in special appeal with a finding of the Lower Appellate Court that the depositions of plaintiff's witnesses, uncorroborated by any documentary evidence of title, which in such cases is almost always available, could not establish the truth of his statements 10 W. R. 204.

411. Per Peacock, C. J., Bayley and Campbell, J. J.—Verbal evidence is not admissible to vary or alter the terms of a written contract

where there is no fraud or mistake, and in which the parties intended to express in writing what their words import. The parties cannot show, by mere verbal evidence that, at the time of the agreement, what they expressed by their words to be an actual sale was intended by them to be a mortgage only.

It is, however, material to enquire whether, having regard to the acts and conduct of the parties, and having reference to the amount of the alleged purchase-money and the real value of the interest to be sold, the parties intended the writing to operate as an absolute sale, and treated the transaction as such, or as a mortgage only. B. L. R. F. B. S. V. 383.

Per Norman and Pandit, J. J.—Parol evidence is admissible to ..... that a bill of sale, though absolute in its terms, was a mortgage. B. L. R. S. V. F. B. 383.

412. A., by a deed purporting to be a deed of absolute sale, conveyed certain property to B.

The deed was registered, C claimed a right of pre-emption. Held, per Peacock, C. J. (Norman and Pandit, J. J., dissenting) that the acts of the original parties or their statements could not be admitted as against a third party to prove that their intention was different from that which their written deed expressed and was intended by them to

. B. L. R. S. V. F. B. 399.

Suit for balance of principal due for money lent, with interest thereon at 5 per cent. per mensem. It appeared that the defendant, being indebted to plaintiff on a promissory note for Rs. 500, applied to him for a further loan of Rs. 1500, proposing to lay out the whole amount of Rs. 2,000 in the performance of a contract then subsisting between himself and the Madras Railway Company and offering to give plaintiff a share in such contract: that plaintiff consented to lend the said sum payable with interest at 6 or 7 per cent. per mensem, in lieu of becoming a partner, and also to give defendant two months' previous notice on requiring re-payment of the loan. Defendant demurred to the rate of interest which he said he would further consider on his return to Cuddapah, but, being in immediate want of the money, proposed to borrow it on a promissory note. Plaintiff, accordingly, on the 13th October

lent defendant Rs. 1500, and obtained, in lieu of the note for Rs.

), which was returned, a promissory note for Rs. 2,000, payable on demand, with interest at 12 per cent. per annum, which note, plaintiff alleged, it was agreed should be cancelled on receipt of a letter from the defendant fixing the rate of interest (this was denied by defendant). Defendant subsequently wrote two letters to plaintiff, agreeing to pay interest at 5 per cent. per mensem, and plaintiff endorsed the said note as cancelled. Plaintiff also alleged that he received interest at the rate of 5 per cent. per mensem for two months, and produced a witness who deposed to that effect. This defendant denied. Held by the Ori-

Court that the oral evidence was inadmissible to show the rate of

rs that of the promissory note, and that the subsequent let-

ters, offering a higher rate of interest, were without consideration, for there was not any evidence of forbearance, and that the plaintiff had a right to sue on the promissory note the very day after it was made.

Plaintiff appealed on the ground that the evidence was admissible.

Held, by Morgan, C. J.—That the evidence was admissible. That the law is that notwithstanding a paper writing which purports to be a contract may be produced, it is still competent to the Court to find, upon sufficient evidence, that this writing is not really the contract. And the risk of groundless defence does not affect the rule itself, though it suggest caution in acting on it. That, in this case, at the time of the advance of the money there was an agreement touching the transaction of loan, although the rate of interest was still unsettled and under discussion. The plaintiff declined to lend on the terms of a joint interest in the venture as proposed by the defendant, and the latter refused to pay the rate demanded. Before any final agreement, and while the transaction was still incomplete, the note was given, not as a writing which expressed or was meant to express the final contract, but rather as a voucher, or a temporary and provisional security for the money pending the discussion respecting the rate of interest. And that if the note was thus given and received, it should not be regarded as the contract between the parties, or as a written contract excluding other evidence of the true contract.

By Kernan, J. (Concurring with the Chief Justice as to the admissibility of the evidence) that assuming that the promissory note did represent a complete contract between the parties, such contract was waived and discharged by the acts and agreements of the parties before breach, and a new contract namely, the contract for larger interest, substituted. 7 M. H. R. 189.

414. Oral evidence will be allowed to defeat a written contract only where mistake or fraud is proved. A deed of sale cannot, by reason of a verbal agreement, be regarded as a mortgage when it is not that the mortgagor was induced by mistake or fraud to sign the of sale, and when the purchaser from the mortgagor sues for redemption with the full knowledge that his vendor had already executed a deed of sale to the defendant. 1 W. R. 76.

EVIDENCE (Parol).

415. There is no provision of law which forbids a Court to accept parol testimony on support of *wassilat* without the support of *lahs*. 6 W. R. Mis. 39.

416. There may be cases in which the Courts would accept act upon parol evidence of the existence of a guarantee and its amount, but such parol evidence must be beyond suspicion. 2 N. W. P. 210.

417. Parol evidence is admissible to prove a verbal contract. 7 W. R.

418. Parol evidence is admissible to prove the conduct of the parties, the value of the property and other circumstances connected with the transaction between the parties to the written contract. 8 W. R. [illegible]

419. Parol evidence inadmissible to vary the terms of a written document, except under special circumstances. 8 W. R. 339.

420. Where there is a written agreement to deliver a quantity of grain *galla* at a particular time, parol evidence is admissible under certain limitations to show what kind of grain the contracting parties had in their contemplation at the time the contract was made. 5 B. H. R. A. C. J. 87.

421. Extrinsic evidence is not admissible to alter a written contract, or to show that its meaning is different from what its words import. Where there is a latent ambiguity in the wording, parol evidence is admissible to explain it. 7 W. R. 144.

422. Parol evidence may be received to show that notwithstanding a deed purports to be a deed of absolute sale, the true nature of the transaction is a mortgage. 1 W. R. 22.

423. Parol evidence was held admissible to explain a deed *e. g.*, to prove that a village not included in a *putnee* lease was intended by the parties to be included in it. 8 W. R. 152.

424. In a suit for specific performance of an agreement to convey certain property, the contract, which was in writing was admitted by the parties, but the defendant alleged that there had been an understanding verbally come to that, if he re-paid the consideration-money with interest &c., to the plaintiff within two years, the plaintiff would re-convey the premises to him. Held, that the defendant could give parol evidence to supplement the written contract, and show that it was intended to be a mortgage and not an absolute bill of sale. 8 B. L. R. 89.

425. Parol evidence cannot be admitted to contradict a deed except where fraud, mistake, surprise, or the like is alleged. W. R. S. N. 58.

426. Parol evidence is not admissible to alter or vary a written document, even if the inadequacy of the consideration and the conduct of the parties show that the transaction was different from what appears in the instrument or writing. 3 B. L. R. A. J. 83.

427. Parol evidence is not admissible with a view to establish the liability of principals whose names have not been disclosed by an agent in signing a promissory note. 3 W. R. 140.

428. Poral evidence is not admissible to vary a deed of sale so as to make it a mortgage deed, whether as against a party to the deed, or as against an innocent purchaser from the person in whose favor the deed was executed. 6 W. R. 111.

429. Where an instrument is on the face of it a conveyance or deed of sale, it is not open to the party who executed it to show by parol evi-

the intention of the parties was that it should not operate as a sale or conveyance. 12 W. R. 264.

430. In a suit by a *Purda lady* to set aside, a bill of sale, execution of which by her had been obtained by collusion and fraud, the Court admitted parol evidence to show that the bill of sale was intend her to operate only as a mortgage, and to vary the rate of interest in stipulated for. 1 B. L. R. O. J. 28.

431. In a suit in a Small Cause Court to enforce a written agreement, the defendant has a right to set up and adduce parol evidence to prove such a state of facts as would show that the instrument did not correctly set forth the terms of the arrangement between the parties, as would justify the Court in its character of a Court of Equity in amending the agreement in a suit for that express purpose. 12 W. R

(Received by consent.)

432. Where both parties to a suit adduce calculations made in ng villages as evidence to establish their respective cases, they impliedly consent that the calculations, although not strictly legal, shall constitute the materials upon which the Court is to act, and they are not afterwards to object to them in special appeal. 10 W. R. 139.

EVIDENCE (Recorded in an Ex-parte case not admissible in new Trial).

433. Where a Court of first instance sets aside its own judgment and after a new trial, in which it takes fresh evidence as well as admits that originally recorded, again gives plaintiffs a decree, it is the duty of the Lower Appellate Court to inquire under section 57 of Act II of 1857 whether, independently of the evidence originally recorded, there was sufficient to justify the decree. 8 W. R. 499.

of).

434. Where evidence has been taken by an Appellate Court in the presence of parties or their agents, it should not be rejected on appeal merely because the Court omitted to record its reasons for admitting it.

(Relevant.)

If a plaintiff's *mooktear* expresses his intention at the first hear- of the case to rely solely on the defendant's evidence, and even not to call any other witnesses than the defendant on the plaintiff's behalf, he is not debarred from afterwards changing his intention, and (as long as the plaintiff's case is not closed) adducing any relevant evidence he may think proper. 1 W. R. 263.

secondary evidence is admissible in the place of pri- mary, is a question for the determination of the Court which tries the on its merits; but such determination is open to special appeal, if it to without evidence at all, or without evidence legally sufficient. 517.

437. With respect to the admissibility of copies of Grants or evidence, the practice in the Mofussil Courts differs from the procedure in England, and is not governed by the strict rules which there prevail, when the question is, whether a copy ought to be submitted to the jury; but it is the duty of the Judge before admitting a copy, of an original document as evidence, to consider what weights and value should be given to it, and to test its authenticity by satisfying himself, that the grounds for not producing the original are well founded so as to lent in the copy as secondary evidence.

copy of a copy of an original *Sunnud*, registered, and proved in another suit, admitted as evidence. 14 M. I. A. 453.

438. Where a document is named by a plaintiff as the best evidence in his favour, he ought not in its absence to be allowed to give any other evidence until that document is accounted for. 21 W. R. 262.

Until a party has exhausted all the means prescribed by law for compelling a witness to produce a document known to be with him, and so long as the original is procurable, or its loss not satisfactorily accounted for, secondary evidence cannot be admitted.

In cases of adoption, careful scrutiny is necessary. The party seeking to establish an adoption, is bound to produce the best evidence procurable. The rule by which the validity of such document may be tested, ntemporaneity of execution and publication of the deed of permission; , in the absence of this test, all the circumstances bearing upon the d deed, and all the probabilities for and against its genuineness, be thoroughly considered.

In this case the plaintiff claiming to succeed as an adopted son, having made every reasonable exertion to trace the missing documents whereon his claim rested (in which he has failed), and being himself not responsible for their disappearance or present non-appearance :—Held, that sufficient grounds were made out for the admission of secondary evidence.

The fact of the adoption, and that it was made with due regard to all necessary ceremonies, being admitted without question and the fact that it took place in furtherance of a power to adopt being (in the absence of the original document) inferrible from the acts of the parties most interested in setting aside the adoption the plaintiff's adoption and consequent right of succession were upheld.

Held, that a sale in execution of a decree against the adoptive mother, not personally, but as guardian of the adopted son, and not for a personal debt, but for payments made by co-sharers of Government Revenue on account of the adopted son, to preserve their joint property, is good as against the adopted son, the co-sharers being entitled to look for the money so paid by them, to the estate which has benefited by such payments. But the estate is not liable for a debt without satisfactory proof that the debt is other than personal, the mere recital in the bond of the purpose for which the money was required not being sufficient proof that such was the case. 1 W. R. 145.

440. Where the Lower Appellate Court regarded the evidence as proving that there was an *urpunnamah*, and that it could not be found on search, that Court was held to have done right in accepting as secondary evidence the authenticated copy of an authenticated copy of that document. 15. W. R. 228.

441. Secondary evidence of the contents of a document is where the Court is satisfied that the document has been lost, and in such a case it is open to the Court to receive oral evidence of the transaction involved, and it is not necessary to insist on the production of a certified copy. 22 W. R. 303.

442. *Semble.*—Copies of documents, for the originals of which no proof was given of search, cannot be received as secondary evidence. 1 M. I. A. 19.

443. An objection to the reception of secondary evidence is properly made in the Court of first instance, but cannot be allowed in any appeal Court. 12 W. R. 13.

444. Secondary evidence cannot be given of a lost instrument requiring a stamp which was not stamped. 4 M. H. R. 312.

445. Where the defendant denied a mortgage to his father set up by the plaintiff, the latter was held at liberty to give secondary evidence of its execution and contents. 5 B. H. R. H. J. 176.

446. In a suit to redeem a mortgage, it was proved that the mortgagees and their assignee had fraudulently destroyed the deed by which the property was mortgaged. Held, that the mortgagees could not be permitted to prove the contents of the deed or the amount of mortgage debt by secondary evidence, and that the representative of the mortgagor should be allowed to recover the lands without any payment. 1 B. H. R. 177.

447. In a suit brought by A, to recover a half-share in certain ancestral land, which he claimed first by right of inheritance, and secondly under a deed of settlement executed by the other half-share, B, since deceased, the widow of B answered that the whole of the land had been assigned for the support of a mosque by B's father; and the Lower Appellate Court found that it was so, and reversed the decree of the Moonsif, who had allowed A's claim. Held, on special appeal, that the document relied upon as creating an endowment had been improperly admitted in evidence; it being only a copy, and the absence of the original not having been accounted for; the Court further observing that the document only purported to be a mortgage, and did not create any religious endowment.

And, on the suit being remanded, the lower Appellate Court found reason to alter its former decree; the absence of the original deed, executed in A. D. 1834, having been accounted for and deed, bearing date A. D. 1840, having been produced, by which B's father assigned the whole of the land in dispute to the *jamat* of the community as trustees of religious property:—Held, on second special ap-

peal, that the deed of 1840, being unstamped was inadmissible in evidence; and that the deed of 1834, being only a mortgage, the equity of redemption was not lost, notwithstanding the failure of the condition that the property was to be considered as sold if the mortgage debt was not paid before A. D. 1846. 3 B. H. R. A. J. 160.

on The defendant by his his exe-

The plaintiff, in his reply, stated

and prayed leave to put in evidence a registered copy thereof, which the Court allowed, and, at the same the fragments of the original to be produced.

d the fragments, and, under section 11 Madras Regulation XVII , put in as evidence a registered copy of the bond. He called witnesses to prove that the fragments produced, formed part of the original bond. The Court admitted the registered copy as evidence, and found for the plaintiff. The Judicial Committee of the Privy Council, on Appeal, reversed this finding, on the ground that the registered copy, in the absence of satisfactory evidence of the destruction of the original bond, was improperly admitted as secondary evidence. 3 M. I. A. 156.

Where an original document is not said to have been lost or destroyed, the proper foundation is not laid for the admission of secondary evidence: if the party interested in its production appears, after diligent efforts, to have had difficulty in producing it, the Court ought to give him more time, or give his opponent notice to produce the document, if it is under the latter's control. 11 W. R. 228.

150. Where a Court is satisfied that a deed was executed and lost or destroyed, it should receive secondary evidence of the con- documentary or oral; and it is not necessary that the witnesses called in to give oral testimony should be attesting witnesses. 10 W. R.

Where a party obtained a decree which was appealed from, and in transit from the first to the second Court the record was irrecoverably lost, the High Court directed the Lower Appellate Court to receive evidence from both parties of the papers which made up the record, or, failing this, additional evidence under section 355 Act VIII of 1859. 7 W. R. 18.

Where a Judge is satisfied of a plaintiff's inability to produce an ial pottah on which he relies, he ought to allow secondary evi- to be given of the contents of the document; but he should be , on reasonable grounds, that the evidence gives a true version of its contents, and he should require sufficient evidence of the execution of the pottah. 9 W. R. 248.

453. The fact that a pottah on which a plaintiff's title is based has not been registered, and therefore cannot be used by reason of the Registration Law, is not a good ground on which a Court would be justified in admitting secondary evidence. 21 W. R. 307.

When the original of a deed relied on by the plaintiff was at

, and plaintiff was only
e reasonance of the defendant, the re
which he could have recourse in lieu was held to be an authenticated copy filed in another case by the defendant herself; and, as such copy could not, under the ordinary rules of Court, be removed from the custody of the Judge, it was held that there is no rule of law in Indian Courts of Equity and good conscience to prohibit the reception of a copy of such copy under the circumstances. 11 W. R. 386.

455. It is not enough for a party desirous of adducing secondary evidence of the contents of a document which ought to have been
ed, to show that he cannot produce it, because it is not registered: must show that its non-registration was not due to any fault or want of diligence on his part, or he must show that the party against whom he
to use it was guilty of such fraud in the matter of non-registra-
that he cannot be allowed to object on that ground to the production of the secondary evidence. 9 W. R. 528.

456. In a suit for rent and damages in which
able is in issue, it is incumbent on the Judge to require the plaintiff to show that in past years the defendant has paid what the plaintiff is now demanding; and for the purpose of proving these past payments, the best evidence is requisite, secondary evidence being only admissible when the absence of primary evidence is satisfactorily accounted for. 2 W. R. Act X. 44.

457. Where in a suit for dower the original *kabinnamah* which is the basis of the suit cannot be produced, its non-production must be most satisfactorily accounted for, or the deed must be proved by secondary evidence of a reliable nature. 11 W. R. 65.

458. A written contract can only be proved by the production of the writing itself, and if the document is inadmissible from want of registration, no secondary evidence of the contract can be received. 8 B. H. A. J.

459. A deed of sale is not a document of which a certified copy is permitted by law to be given in evidence, *i. e.* to be given
first instance without having been introduced by other
. R. 303.

460. In a suit in which plaintiffs claiming as heirs of a Hindu, sought to set aside an adoption effected by the widow as without authority and otherwise improper, the lower Appellate
that the *onus* lay with the plaintiffs to prove their affirmation
to the adoption: Held that as one of the witnesses to the
was convicted of perjury, the plaintiffs were entitled to an opinion from the Judge as to the genuineness of that document, and unless the defendant's case in that respect could be established, the plaintiffs would
entitled to a decree.

Held that although the fact of the adoption having taken place, six years having elapsed, might render title evidence sufficient, these circumstances would not warrant the acceptance of suspicious evidence which was open to question. 24 W. R. 107.

EVIDENCE (Taken by Civil Ameen.)

461. Where a Principal Sudder Ameen had deputed a Civil Ameen to inquire into the fact of possession instead of hearing the evidence on the point himself: Held, that even if the Principal Sudder Ameen's order was improper, the deputation of the Ameen was legal, and the evidence taken by the Ameen was legal evidence, to be considered on its own merits. 9 W. R. 495.

EVIDENCE (Taken on Commission).

462. The deposition of a witness taken on commission is not inadmissible, because the evidence is given in the absence of the other side. 10 W. R. 237.

EVIDENCE (Tender of.)

463. Where in a suit for confirmation of possession, defendant pleads in special appeal that he had no opportunity to adduce evidence, he must show that he tendered it and that it was rejected on the ground alleged. 11 W. R. 248.

EVIDENCE (Tendered by Party whose case has been closed.)

464. It behaves all Courts of first instances to take care that a party to a suit whose case has been finished is not permitted, without good reason, to mend that case by fresh evidence after his adversary has succeeded in impeaching it; evidence given under such circumstances must always be in the highest degree untrustworthy. 8 W. R. 462.

[ATION (By Commission).

465. The examination by commission of a *purda nusheen* woman is not necessary where she can be examined in Court in a *palkee* or otherwise on a proper identification. 18 W. R. 230.

(Commission for—of Witnesses).

A commission for the examination of a witness, at Mandalay, can only issue from the High Court.

The consent of parties is not requisite to the admissibility of evidence taken under such commission, if the examination have been upon oath or affirmation. 2 B. L. R. A. J. 73.

EXAMINATION (Of Defendant).

467. Where plaintiff rested her claim solely on the deposition of the defendant, to be taken by his placing his hand on a particular text of the *koran*, and the defendant being examined did not prove the claim.

Held, that the Lower Appellate Court very properly examined the defendant in the way and manner sanctioned by the procedure Court.

Held, too, that the Lower Appellate Court was not right in allowi plaintiff to examine further witnesses and to re-open the case. 10 W R. 284.

(Of Parties).

468. Judges enjoined to see that the parties have been properly examined according to law, that the particular issues arising out of such examination are laid down, and that both parties have full opportunity to adduce evidence upon those issues. 4 W. R. Act X. 42.

469. It is the duty of a Court to elicit by examination of the parties, all the material facts which do not appear in the plaint or written statements, to frame distinct issues, and to dispose of them precisely. 4 W. R. Act X. 43.

EXAMINATION (Of Witnesses).

470. Evidence given when a party never had the opportunity either to examine or to cross-examine the witnesses, or to rebut their testimony by fresh evidence, is not legally admissible for or against him, unless he consents that it should be so used. 9 W. R. 587.

471. It is the bounden duty of a Court, unless where it sees that there is a clear intention to delay or obstruct justice, to examine all witnesses whom the parties wish to be examined. 17 W. R. 172.

472. It is not imperative on a Lower Appellate Court to examine any number of witnesses a suitor may ask to have examined, and the refusal of the Court to do so is not a ground for special appeal. W. R. S. N. 249.

473. When witnesses under examination make statements which are contrary to statements previously made by them, the Court ought to draw their attention to the contradiction; but an omission to do so does not make the judgment bad in law. 24 W. R. 312.

474. The examination of a material witness of the plaintiff in the absence of the defendant, his *vakeel* having been removed and no other *vakeel* then acting for him, is such an irregularity that if objected to at the proper time would be fatal to the reception of such evidence. But where no objection was urged during the trial, or until an appeal was interposed, the Judicial Committee held that the objection came too late, and could not be sustained, as, notwithstanding such irregularity and miscarriage, that fact did not taint the whole proceedings so as to prevent the plaintiff recovering upon the other evidence which was sufficient to establish his case. 6 M. I. A. 233.

475. A Lower Court having allowed some of the witnesses of the plaintiff to depart without taking their evidence, the plaintiff objected to its taking the evidence of more of the defendant's witnesses than of his own. Upon this, the Court allowed some of the defendant's witnesses to leave the Court without examining them. The case was remanded for examination of all the remaining witnesses and a fresh decision 12 W. R.

EXAMINATION (Of Witnesses as Parties).

476. A defendant cannot be deprived of his right to summon a plaintiff to give evidence by the Court examining the plaintiff's
4 W. R. Act X. 5).

(Of Possession).

477. A statement by a witness that a party is in possession is, in
admissible evidence of the fact that such party was i
L. R. F. B. 97.

BOOKS.

The account-books of a Factory regularly sworn to by the manager are legal evidence of payment of rent. 2 W. R. Act X. 76.

479. Factory books cannot be used as independent primary evidence of the payment to which the entries refer. 23 W. R. 27.

FALSE

480. Applying a principle laid down by the Privy Council that, in this country, a whole case, if good, should not be dismissed because the plaintiff has foolishly and wickedly relied in support of it upon false evidence, the High Court held that a Lower Appellate Court was wrong in dismissing a case (which had been decreed by the first Court) because the copy of a *Kobaluh* filed by plaintiff was found to contain signatures of witnesses purporting to be subscribing witnesses, which had been added to the original deed, although plaintiff's possession was admitted, and the only question was as to the character of that possession. 19 W.

481. In a prosecution for false evidence, there must be some specific charge of making some particular and specific false statement, and direct and distinct evidence that each specific statement is false. 8. N. 15.

In a case of
by the Magistrate was put in to prove what the
The document was not interpreted to the accused in in which it was given, or which he understood; nor was it read over in accordance with requirements of section 339 Code of Criminal Procedure in the presence of the person then accused:

Held, that the English record of the Magistrate was not legal evidence under the Evidence Act I. of 1872 S. 91, of what the prisoner said before the Magistrate. 23 W. R. Cr. 28.

FAMILY USAGE.

483. Bombay Regulation IV of 1827, Section 27 cl. 2 imposes no tion on the Court, in the absence of any allegation in the plead- of family usage or custom, to call for evidence of such fact. 6 M. I. A. 446; 4 W. R. P. C. 94.

484. The finding of a Civil Court as to the execution of a will is not ive evidence on the point, if the question of its execution not a material issue in the suit. 12 W. R. 87.

Where plaintiff and defendant respectively put in as evidence different portions of the proceedings in a former suit, and found arguments thereon, the Court is bound to use them all as evidence. 12 W. R. 87.

486. In a former suit by A against his agent for an account of the collections of a certain share in land. B intervened and was made a party. In that suit the Court declared A to be the Zemindar, and as such entitled to the rents and to an account: Held, that that finding was binding against B in a subsequent suit against him by A for recovery of the same share. 14 W. R. 165.

487. A finding in a former suit, in which the question was tried between all the parties to the present suit, was held to be admissible as evidence in this suit under the Evidence Act S. 13, although the plaintiffs and defendants in the present suit were in form co-defendants in the former. 22 W. R. 457.

FINDING *(By Criminal Court.)*

488. A Civil Court cannot rely on evidence taken in the Criminal Court, but is bound to record its own evidence and come to a determination on the evidence taken before it as to the fact found by the Criminal Court. 12 W. R. 477.

FINDING *(Of Fact).*

489. The finding of a fact by the Lower Appellate Court upon evidence, a portion of which was inadmissible, is not such a finding of fact as cannot be interfered with in special appeal. 3 B. L. R. A. J. 258.

FORGED DOCUMENT (Production of—by Party.)

490. The production in evidence of a forged document by a party to a suit does not relieve the Court from the duty of examining the whole evidence adduced on both sides, and of deciding the case according to the truth of the matters in issue. 2 W. R. Act X. 99.

FORGERY.

491. Where a deed has been proved and attested in due form, a Court is not justified (without any evidence of its fabrication) in finding from such circumstances as inadequacy of the consideration-money that the deed has been fabricated.

Where a person asks to have a deed which is said to have been executed by him declared to be a forgery, he ought to present himself for examination. 20 W. R. 181.

492. In a question involving the genuineness or forgery of an i

ment sued upon, which the Courts in India had opportunity of personally inspecting, and held genuine, it is necessary that the evidence impeaching the document, be clear and strong to justify the Appellate Court reversing the decree appealed from.

Circumstances in which the Judicial Committee upheld a Bond impeached as a forgery, and reversed the concurrent decrees of the Zillah and Sudder Courts in India. 7 M. I. A. 207; 5 W. R. P. C. 3.

FRAUD.

493. More speculation and probability will not in law support a finding of fraud. Where a party puts forward a charge of collusion with a view to defraud, it is incumbent on him to support it by evidence to a certain reasonable extent: *e. g.*, where a party admits that an instrument which, on the face of it, appears to deal with the property is written or signed by the owner of the property, he can only get rid of its effect by showing facts which would establish fraud in its inception, or show that it was not intended to be operative according to its purport. 22 W. R. 124.

FUNCTIONS (Of Ameen.)

494. Where an Ameen's duties are expressly confined to a comparison of the land with the chittas, any evidence taken by him contrary to his instructions cannot be looked at. 24 W. R. 208.

G.

GAZETTE (Government.)

495. Under section 355 Act VIII of 1859, the Government Gazette containing the advertisement of sale, and a printed paper purporting to be the conditions of sale alluded to in the Gazette, and issued from the Master's office in the name of the Master, were admitted in evidence to prove the actual conditions of the deed of sale. W. R. S. N. 50, 51.

H.

HAND-WRITING.

496. When it becomes necessary to establish the genuineness of a writing, the testimony of the writer or of some person who saw the paper or signature written, is not, as a matter of law, the only mode of proof. Evidence as to the similarity of hand-writing is just as good in point of admissibility as the testimony of the subscribing witnesses. 13 W. R. 191.

497. Where the Judge of first instance doubted the authority of a deed, it being written on two pieces of stamped paper of different dates, held under the circumstances, not to be a proper deduction.

Where evidence could have been adduced, and was not, as to a hand-writing being forged, and the Judge by comparison with other

hand-writing held it to be a forgery, such finding was disapproved of. 8 B. L. R. P. C. 490.

I.

IDENTIFICATION.

498. Where witnesses questioned as to the identity of a bond put before them, simply attest their own signatures, their evidence does not legally establish the bond. 12 W. R. 529.

INCOME-TAX PAPERS.

499. Where the accounts of a mortgagee who has been in possession are being taken, his Income-Tax papers are inadmissible as evidence in his favor, though they may be used against him. 9 W. R. 275.

INSTRUMENT (Apparently altered and suspicious)

500. In an ordinary case the person who presents an i....., which is an essential part of his case, in an apparently altered and suspicious state must fail from the mere infirmity or doubtful complexion of his proof, unless he can satisfactorily explain the existing state of the document. But this rule admits of exceptions, if there be independently of the instrument, corroborative proof strong enough to rebut the presumption which arises against an apparent and presumable falsifier of evidence; and such corroborative proof will be greatly strengthened if there be reason to suppose that the opposite party has withheld evidence which would prove the original condition and import of the suspected document. 1 W. R. P. C. 36.

ISSUMNUVISEE PAPERS.

501. Former decision rejecting *issumnuvisee* papers, which were not satisfactorily proved, as conclusive evidence of a putneedar's title to land, adhered to. If properly supported and proved, such papers are only *prima facie* evidence, until rebutted. 9 W. R. 159.

502. In a suit by a purchaser of a putni at a sale for arrears of rent to enhance the rent of the ghatwal under Regulation VIII of 1819, held, that *issumnuvisee* papers for 1811-1813, stating that the amount held by the ghatwal was 100 bigas, did not entitle the plaintiff to enhance the rent of the surplus over that 100 bigas in the face of satisfactory oral evidence of long uninterrupted possession. 8 B. L. R. P. C. 504.

J.

JUDGE (

When a Judge gives evidence he should be sworn like other . . . R. 252.

JUDGMENT (Against other Parties having similar interests.)

504. A judgment in another case is of itself insufficient evidence against a party who had no part in it, even though his interests may be of a similar nature to those of the person then suing. 1 W. R. 270.

JUDGMENT(Concurrent).

505. When a plaintiff sues for confirmation of possession and seeks a declaratory decree, he must make out his title affirmatively. If the Indian Courts agree in holding that he has not done so, even though the High Court may not have attended to the depositions of materiral witnesses, the Judicial Committee will not distrub the decision of the High Court. 19. W. R. P. C. 1.

JUDGMENT(Ex-parte).

A judgment adduced as evidence is not to be rejected merely on the ground of its having been *ex-parte*. 10 W. R. 257.

JUDGMENT (In another case).

507. A judgment in a case against the same defendants, where they raised the same contention as at present, though not conclusive evidence against them, is admissible as evidence for what it is worth. 14 W. R. 201.

508. Plaintiff instituted two suits, one against S. and the other against present defendant. The suits were tried together by the Subordinate Judge, and dismissed. The one against S came up in regular appeal to the High Court ; the other (the present one) was heard in appeal by the District Judge, who applied the judgment of the High Court in the case of S as evidence against the present defendants. Held, that this was wrong, and that the Judge ought to have decided the case upon the evidence on the record. 22 W. R. 538.

JUDGMENT (In Former Suit).

509. Except in matters of general interest or public rights, a verdict in a previous suit, to be admissible, must be between the same parties or parties through whom the parties actually in litigation claim. 6 W. R. 232.

510. The judgment in a former suit against the same defendants in respect of the same subject matter is admissible, though not conclusive, evidence against the defendants in a subsequent suit brought against them by other parties. 6 B. L. R. [illegible]

511. A judgment in a former suit against plaintiff, to which defendant was no party, is not evidence between the parties to a present [illegible] 8 W. R. 422.

512. The judgment in a suit in which the cousin of a former manager sued him for a portion of certain villages, some of which were included in the present suit and in which it was decided that the manager

manager and not owner, was held by Innes, J, (Kindersley, J dubitante) to be a decision upon a question of public right, and was recievable against the defendant. 7 M. H. R. 306,307.

513. In a suit for declaration or confirmation of plaintiff's title to the office of *odhikaree* of the *Diftoo Sastur* alleged to be situated at Nowgong, where defendant in his written statement claimed to be the *odhikaree*, and alleged that the head-ship was situated elsewhere, the defendant was held to be asserting a title adverse to plaintiff sufficient to justify a declaratory decree.

Held that in determining the right to the *odhikaree* and the custom or rule of succession to the office, previous judgments or decrees involving instances in which the right and custom in question had been successfully asserted, were admissible as evidence under the provisions of Act 1 of 1872 S. 13. 20. W. R. 345.

514. By a decree brought by A against a widow as heiress of her husband to set aside alienations by her and establish A's right as reversioner, it was declared that A was reversioner. Subsequently B. (who was not a party to the former suit) sued to have it declared that he, and not A, was the person legally entitled to succeed on the widow's death. Held that the judgment in the former suit was not (upon the ground of its having been made in a suit brought against the widow when holding the estate as heiress) admissible as evidence against the plaintiff B in the second suit.

The suits to which the Privy Council intended to refer in the *Ganga* case (2 W. R. P. C. 31) are suits in which the title of the settler or the validity of the estate tail has been in issue, and not to suits against the tenant-in tail in which a question has incidentally arisen and been determined as to who was the remainderman entitled to succeed upon the termination of the estate tail. 7 W. R. 3

JUDGMENT (In Resumption Suit).

515. In a suit for lands claimed as originally belonging to a lakhiraj holding of plaintiff's ancestor, which had been resumed by the zemindar, who afterwards caused it to be sold in execution of a decree as the lakhiraj of his debtor, it was held, that the judgment in the resumption suit was no evidence of plaintiff's title as against the auction-purchaser (defendant), who had been no party to the suit. 10 W. R. 112.

JUDGMENT (Of High Court.)

516. In a suit for arrears of rent from a putnidar, where plaintiff stated that he had on an allegation made by defendant that a dacoity had taken place in her house, allowed her an abatement, but finding from a judgment of the High Court that no such dacoity had taken place, he claimed full rents. Held that the High Court's judgment was admissible, with a view to ascertain the truth of plaintiff's case. 9 W.

JUDGMENT (Of Inferior Court.)

Held, that the judgment of a Moonsiff's Court (confirmed by

the Lower Appellate Court) in a suit for arrears of rent, as to the validity of the same leases which plaintiff there set up, and of the same mokururee pottah which defendants then brought into Court, was not conclusive evidence in the present case for though an inferior Court has jurisdiction to try every matter which is necessary for the adjudication of the point in contest before it, its decision is not final as regards other facts not in contest before it. 13 W. R. 129.

JUDGMENT (On Compromise).

518. Where a suit was disposed of according to a compromise, of which the judgment set out the terms in the form of a recital: Held that the judgment, though not in the ordinary form of a decree, was the record of a transaction by which the rights of the parties were recognized, and was therefore relevant as evidence under the provisions of Act I of 1872 S. 13. 23 W. R. 162.

JUDGMENT (Reliance by Plaintiff on—subsequently reversed).

519. Where the plaintiffs in these suits appealed in both the Lower Courts to the judicial determination of a previous suit as evidence in their favor, and embodied it in their plaints as being a material particular of the cause of action which they proposed to establish, they were not allowed in appeal to the High Court to object to the reception by the Lower Appellate Court of the judgment in question as evidence in the present cause, on the ground that they were not parties to that case, although the Judge, on review, reversed the judgment he had already passed in favor of these plaintiffs, on the strength of the decision of the High Court which reversed the judgment in the previous suit on which the plaintiffs had relied. 8 W. R. 492.

JUMMABUNDEE.

520. Where it is shown that the *jummabundee* has not been acted on, but is a statement of that which is not in accordance with the facts, such *jummabundee* cannot be considered as evidence upon which a decree should be based. 2 N. W. P. 2.

JUMMABUNDEE PAPERS.

521. *Jummabundee* papers can never be treated as independent evidence of any contested fact. 9 W. R. 451.

522. *Jummabundee* papers can be used only as corroborative evidence. 6 B. L. R. App. 62; 14 W. R. 475.

papers filed by a *malik* in *butwarrah* proceedings to which the tenant is not necessarily a party, cannot be used as evidence against such tenant in a suit for arrears of rent. 20 W. R. 171.

524. *Jummabundee* papers for the year in respect of which rent is
ed, made out by the officers of the person claiming the rent, cannot be evidence of his right to that which they set forth; though the evidence of the *patwarry* (as being the officer usually charged with the duty of the rent) as to the amounts collected in previous

roborated by the *jummabundees* of those years, would be conclusive in respect of the claim. 20 W. R. 142.

JUMMA WASIL BAKEE PAPERS.

525. The best evidence is required to prove a document so naturally open to suspicion as a *jumma wasil bakee* paper. 5 W. R. 242.

526. It is doubtful whether, under section 43 Act II of 1855, *jumma wasil bakee* papers are admissible as corroborative evidence. 8 W.R. 328.

527. *Jumma wasil bakee* papers are at the best corroborative evidence, not independent testimony.

Quære.—Can such papers be dealt with as a "book" or be described as "kept in the regular course of business," within the meaning of section 43 Act II of 1855. 8 W. R. 464.

528. *Jumma wasil bakee* and *nekasee* papers, though corroborative evidence against tenants, cannot be admitted as against a party holding under an adverse title. 11 W. R. 165.

Jumma wasil bakee papers ought not to be regarded as anything else than "books proved to have been regularly kept in the course of business" and by section 43 Act II of 1855 they are "admissible as corroborative, but not as independent proof of the facts therein stated." They are consequently insufficient by themselves and without independent proof to rebut the presumption which arises under section 4 of Act X of 1859 in favor of a defendant who has been found to hold lands at a uniform payment of rent for more than 20 years. 8 W. R. 280.

530. Held in a suit for enhancement of rent, that *jumma wasil* papers, when produced by the Zemindar at the citation of the defendant himself, were not merely corroborative, but, under section 4 Act X 1859, good and sufficient evidence as against the latter in rebutting the presumption under section 4 Act X of 1859. 10 W. R.

531. In a suit for enhancement of rent a collection account or a *jumma-wasil-bakee* filed many years previously by the plaintiff's predecessor in a suit to which the defendands are not parties is not *per se* evidence for the plaintiff that the defendant's predecessor held at the rates of rent mentioned therein.

Semble that, if proved to have been regularly kept in the way of business, the paper might have been put in as corroborative evidence under section 43 Act II of 1855, or might have been used by the writer thereof to refresh his memory under section 45.

Semble that, if it were shown that the writer was dead or could not be found, the original might have been put in evidence under section 39.

Semble, that series of collection accounts or *jumma-wasil-bakee* papers appearing to be regularly kept may be evidence and entitled to credit on the same principle as other contemporaneous records made and kept by the party producing them in the ordinary course of his business. 7 W. R.

K.

KABULEUT

532. *Kabuleuts* proved in the ordinary way as to their genninenes ought to have due weight given them, even though not filed so clearly in the litigation as the Judge would have expected. 9 W. R. 453.

1. Suit for *kabulent* at an enhanced rent : Held (by Norman, J.,) that the Judge was not at liberty to reject as matters which he could wholly leave out of consideration, any of the evidence before him in a case where the witnesses were unimpeached in their general character and uncontradicted by any testimony on the other side, and where there was no improbability in the facts wihch they related, and that the probative force arising from concurrent testimony was the compound ratio of the probabilities of the testimonies taken singly.

Held (by Seton Karr J.), that as there was a break of 3 years in the period of uniform payment which would give rise to the presumption of uniform holding from the time of the Permanent Settlement, the Judge, instead of accepting the dakhilas merely because they were not denied by the plaintiff, should have found whether the dakhilas were satisfactorily proved and attested, and, if so, whether they could legally support a uniform payment for 20 years. 7 W. R. 106.

L.

LEASE (Unregistered.)

534. Where a lease is inadmissible as evidence because it is not registered, no secondary evidence of its execution is admissible. 11 W. R. 16.

LETTER (Between District Authorities).

535. Letters between district authorities are public documents forming a record of the acts of public authorities, and as such admissible as evidence under Act I of 1872 section 74. 23 W. R. 272.

LETTER (Containing Admission).

536. A letter containing an admission does not require a stamp before it can be admitted as evidence. 23 W. R. 325.

LETTER (Of Collector.)

537. A letter of the Collector containing a summary of the statements by *Zemindars* for information of the Board of Revenue in a dispute, as to the right of inheritance to a *Zemindary* in the same district, is not admisible as evidence. 14 M. I. A. 570.

LETTER (Registered).

538. A person refusing a registered letter sent by post cannot afterwards plead ignorance of its cotents. 16 W. R, 224.

LITIGATION.

539. Litigation is a test, but not the sole proof, of the existence of a custom. 5 W. R. Act X. 42.

LOAZIMA PAPERS.

540. Loazima and thaka papers are legal evidence *quantum valeat*. 10 W. R. 343.

The mere insertion of the name of the defendant's father in the Loazima papers of the Zemindar is no sufficient evidence that rent has ever been paid for the lands in dispute. 6 W. R. Act X. 17.

LOCAL INVESTIGATION.

542. An investigation as to mesne profits made by a Civil Ameen in execution of a decree is no evidence against a party who was absent therefrom; and if his name was not mentioned in the petition for execution, no presumption can arise that he was a party thereto. 14 W. R. 373.

543. The investigation by a Magistrate in a case in which he found that the lands in dispute were not within his jurisdiction but within that of another Magistrate, is not evidence.

Nor is the opinion of the Magistrate who has jurisdiction, evidence on the question of title, the Magistrate's duty in such cases being confined to the point of possession. 6 W. R. 137.

544. The report of an Ameen and evidence recorded on a local enquiry are evidence in the suit, and there is no legal objection to the parties to the suit agreeing that the evidence should be taken before the Ameen, and that the matters in dispute should be referred to him for enquiry. 2 B. L. R. App. 3.

545. An Ameen should be appointed to hold a local investigation only when it is necessary to inspect the land which as the subject of dispute, to make maps of localities to obtain information with regard to the physical features of the place, to identify the land in maps with parcels which are the subject of the suit, and to identify the maps with one another with the aid of objects to be found in the land; and for those and similar purposes, an Ameen may examine witnesses when the evidence which they have to give is of such a nature that it ought to be taken by him on the spot. Where, however, any fact can be proved by evidence taken otherwise than on the spot, that evidence ought to be taken by the Court itself in a regular manner and not by an Ameen.

Quære.—Whether, where an Ameen has in fact been, though improperly, deputed and has examined witnesses, that evidence ought to totally rejected. 17 W. R. 282, 283.

LOTBUNDEE.

Lotbundee cannot be accepted as secondary evidence in

of the certificate of sale, unless the absence of the certificate is sufficiently accounted for, and no better evidence than the *lotbundee* can be produced. 21 W.

547. The bare assertion of witnesses, unsupported by any details of the causes, the course, and the treatment of the malady, ought not to be accepted as satisfactory proof of insanity. 22 W. R 3

M.

MALA FIDES.

548. Inadequacy of consideration is not conclusive proof of *mala fides*. 6 W. R. 30.

MAP.

549. A map is not admissible as evidence unless it is stamped. W. R. 180.

550. A map is not evidence of title, but only of possession, even though prepared by the gomashtas of both plaintiff and defendant. 10 W. R. 339.

551. Where one Court has acted on a map in a suit as genuine and correct, another Court is not bound to receive and act on the same map. W. R. S. N. 323.

552. A map which had been registered as part and parcel of a bill of sale, and was part of plaintiff's title deed, was held to be admissible evidence. 24 W. R. 188.

553. Held that in a suit to establish title to land, where an Ameen's map which professed to show the daghs of a hustabood chittah "as not questioned by either party, it was not open to the Court to question its correctness and to try whether it was possible to contract any map from the chittah. 14 W. R. 391.

554. Where a Civil Ameen makes a local inquiry as to the situation of certain disputed lands with reference to the collectorate map put in by the plaintiffs, and not objected to by the defendants, who are present and recognize the boundary indicated as that whereon the inquiry is to be based, the map must be taken to be one which the parties recognize as correct and trustworthy, irrespective of the question whether it was prepared with the authority of Government. 21 W. R. 115.

555. When a Judge sends for a map or orther evidence, he is bound to record his reason for doing so, according to the provisions of the Code of Civil Procedure, and the evidence so obtained must be taken and received by him in the presence of the parties in open Court and afterwards kept on the record. It is not competent to him under section 355 merely of his own discretion to send for a document for personal inspection irrespective of the parties to the suit. 21 W. R. 416.

MAP (And Chittah).

In a suit to recover possession of land contained in a Government resumed mehal, where defendant's plea was that the land had been purchased by him at an execution sale for arrears of rent as belonging to a jungle mehal, the Lower Appellate Court refused defendant's application for a comparison with the maps and chittahs made on the occasion of a boundary dispute between the Zemindar and Government, when it had been decided in a local inquiry that the land belonged, not to the resumed mehal, but to the jungle mehal. Held that the Subordinate Judge ought to have entertained the application,—the evidence offered having been the very best. 15 W. R. 441.

557. The rights of property as between two parties cannot be affected by a map drawn for a totally different purpose, and a purpose totally irrelevant to the subject of the dispute between them. 2 W. R. P. C. 29.

MEASUREMENT GOVERNMENT.

A measurement made by Government from whom plaintiff derives his title was, in the absence of any evidence to the contrary, held as admissible in evidence of the area actually found under cultivation. 17 W. R. 258.

MEASUREMENT PAPERS.

559. Measurment papers cannot be treated as inadmissible in evidence because set aside by decisions of the Lower Courts, if those decihave been reversed by the High Court. 16 W. R. 4.

560. A Lower Appellate Court was held to have been fully justified in rejecting measurement papers as inadmissible in law, where no proof was given to show in what circumstances, under what authority, and for what purpose they had been prepared. 15 W. R. 218.

561. Measurement papers of a Zemindary made for the purpose of a partition, are admissible as evidence as to title as shewing what the Zemindary consisted of, though the partition may not have been carried out. 4 W. R.

MEMORANDUM (Of Collector on Settlement Record).

562. Where a memorandum of an order made, or proposed to be made, by a Collector upon a reference by his subordinate, which was found on a paper taken from the middle of a settlement record, was produced in Court in that form without explanation, and used by the Judge as evidence of acquiescence.

Held that it was not susceptible of use in that way nor could it bind the Collector. 24 W. R. 279.

N

563. A Native case is not necessarily false and dishonest, because it

rests on a false foundation and is supported in part by false evidence. 7 W. R. P. C. 13; 11 M. I. A. 177.

NATIVE EVIDENCE.

564. With reference to the lamentable disregard of truth prevailing amongst the natives of India, the Privy Council held that it would be *very dangerous for the Court altogether to discredit witnesses deposing viva voce* by reason of the necessity imposed on the Court to sift the evidence of such witnesses with great minuteness and care. 7 W. R. P. C. 73.

NON-REGISTRATION.

565. Where a pottah and *Kaboolent* have been found inadmissible by reason of non-registration, no contract which they contain can be received in evidence. 13 W. R. 397.

566. Where defendant, after executing a bill of sale in respect of certain lands and receiving the full amount of purchase-money agreed upon, had repudiate the contract, and refused to make over possession, it was held that though the fact of the deed of sale not being registered precluded it, under section 13 Act XVI of 1864, from being admitted as evidence, yet plaintiff was not excluded from shewing by other evidence that he performed his part of the contract. There is nothing in that section which says that no contract purporting to create or transfer any right, title, or interest in land shall be recognized by the civil Court, unless reduced to writing. 9 W. R. 351.

NON-TRAVERSE.

567. In a suit for enhancement of rent, a defendant is not bound to traverse a statement made by the plaintiff in the notice of enhancement as to the description of the land in question. The doctrine of admission by non-traverse is not applicable to written statements filed under Act X of 1859. 9 W. R. 83.

NOTICE (Of Facts).

568. Notice of facts from which the infirmity of the vendor's title might be inferred is evidence of a mala fides, but is not itself mala fides, and the question of *bona fide* purchase is one of fact. 5 M. H. R. 385.

O.

OBITER DICTA.

569. A presumption made in a former case, being only a *dictum* with reference to a matter immaterial to the decision of that suit, cannot be proof of the thing presumed. 21 W. R. 30.

OMISSION.

570. In a suit to hold certain lands on a mokurrree tenure, the lower Appellate Court was of opinion that plaintiff would have established his

case but for his omission, on a witness in a suit between third parties, to make any mention of the mokururee: Held, that the Judge had given undue importance to the omission which occurred under circumstances not naturally or necessarily calling for mention of the mokururee. 19 W. R. 217.

ONUS PROBANDI.

571. The mere putting what is perhaps a greater burden of proof upon one party than upon the other, though it may not be strictly correct, is no ground for reversing a decree in appeal, where the decision of the case on the merits has not been affected by any thing which has been done as to the *onus* of proof. 18 W. R. 106.

572. Where a son under the *Mithila* law sued to set aside sales by father: Held that the purchasers were not bound to show an absolute necessity for the sales, it being sufficient if they have acted *bona fide* and with due caution and were reasonably satisfied, at the time of their respective purchases, of the necessity of the sales in order to meet debts which the father had a right to discharge. The *onus probandi* in such cases will vary according to the circumstances. 6 W. R. 149.

573. In a suit in which plaintiff claimed 4 plots of land as belonging to his putnee, and defendant alleged that they formed part of the resumed land of a jote for which he had obtained a decree in a resumption suit and of which he had ever since been in possession, the parties went to trial on the issue whether the land was mal as beyond the limits of the decree, or lakheraj as included in the chittahs according to which possession was given to the defendant in execution on a consideration of what the latter had received under the decree, the first Court held that he was not entitled to retain the disputed land. The Appellate Court did not look beyond the plaintiff's chittahs: Held that the circumstances justified the first Court in deviating somewhat from the usual rule of law as regards the *onus probandi*, and that the course taken by it was most consonant with justice. 15 W. R. 183.

ONUS PROBANDI (As to Bona fides of Transactions).

574. When a person, after attaining majority, questions any sale of his property made by his guardian during his minority, the burden lies on the person who upholds the purchase, not only to show that, under the circumstances of the case, either the guardian had the power to sale or that the purchaser reasonably supposed he had such power, but, further, that the whole transaction, so far as regarded the purchaser's part in it, was *bona fide*. Following the principles laid down by this Court in the case of *Kanye Lall Juhoree* versus *Kaminee Dullee*, it was held that when either the person who sells labors under disqualification, or the purchaser stands in a fiduciary relation to the owner of the property, the *bona fides* of the dealing cannot be presumed, but must be made out by the purchaser. 9 W. R. 297.

ONUS PROBANDI (On Accuser).

In a suit for damages for a false charge, held an accusation which

if

facie evidence that the accusation was maliciously brought, and that it is for the accuser (defendant) to rebut that evidence by showing that he had reasonable and probable cause for making the accusation. 6 W. R. 29.

ONUS PROBANDI (On Alienee).

576. Where a reversionary heir sues to recover property on the allegation that it had been improperly alienated, it is incumbent on the alienee to show that there was actual necessity for the sale transaction under which he claims, or that he was reasonably led to suppose that such necessity existed. 10 W. R. 94.

ONUS PROBANDI (On Alleging Party).

577. Where a party alleges that no summons has been served upon him, it is for him, under Act VIII of 1859 S. 119, to prove his allegation. If he starts a *prima facie* case by his oath, the opposite party must rebut this by evidence taken in the presence of the first party and subject to cross-examination by him. 22 W. R. 423.

578. Where a person is alleged to be in possession, not as owner of the full proprietary right, but as mortgagee, the burden of proof of such qualified ownership lies on the party asserting it. Such a case falls within the scope of section 110 Act I of 1872. 6 N. W. P. 36.

ONUS PROBANDI (On Auction purchaser.)

579. The mode in which the *onus* of proving a lakhiraj holding from the period of the Permanent Settlement is to be thrown on an auction-purchaser at a sale for arrears of revenue coming under clause 14 section 1 Act XIV of 1859, and suing within 12 years of his purchase. 3 W. R. 70.

The auction-purchaser at an execution-sale of the property of a member of a Hindu family living, under the Mitakshara law, in commensality and joint enjoyment, if he sues to obtain possession of his purchase is bound to rebut the presumption of that law in regard to such property, and show that it was acquired by the member in question for himself alone. 22 W. R. 116.

ONUS PROBANDI (On Banker.)

Where the fact of payments by a banking firm is distinctly put in issue, the books of the firm being at most corroborative evidence, the mere general statement of the banker to the effet that his books were correctly kept is not sufficient to discharge the burden of proof that lies upon him; particularly, if he has the means of producing much better evidence. 23 W. R. P. C. 390.

ONUS PROBANDI (On Claimant.)*

582. A paintiff is bound to prove his claims as he lays it in his

plaint, and is not entitled to succeed upon proof of a different

Where a defendant does not specifically allege fraud otherwise than when generally denying the truth of the plaintiff's allegations, he states the plaintiff's claim to be not true, the *onus probandi* is on the plaintiff. 6 W. R. 195.

584. The *onus* is not on the defendant to prove the contrary, but on the plaintiff to prove his allegation that he has, in the account on which he claims arrears of rent from the defendant, credited the defendant with certain collections from the ryots admitted by the plaintiff to have been made by him. 1 W. R. 219.

Where persons have long held as *khadims* under the superior holders or managers of endowed property, and claim to hold a permanent *khadim* tenure from which they are not liable to be ejected except for misconduct, the *onus probandi* is on them. 6 W. R. 89.

586. Where the right of A to a *howalah* is not denied, and B seeks to dispossess a purchaser from A in possession for more than 25 years, B is bound to prove that he acquired the *howalah* in the way, he alleges, viz., in the exercise of his Zemindary right upon the relinquishment or abandonment of the *howalah* by A. 2 W. R. 42.

587. Held by the majority of the Full Bench (Mitter, J. dissenting), that in a proceeding of execution of a decree under section 246 Act VIII of 1859, the claimant, and not the execution-creditor, should begin; and he must prove, not the title of any third person, but that property belonged to him, or was in his own possession. 11 W. R. F. B. 8.

588. The *onus* of proving that a deed of compromise was beneficial to a minor, is on the party making the allegation in a transaction where the minor is alleged to give up her title in a large estate for a very inadequate maintenance, and when the minor withdraws her right of appeal as to a portion of the property, and waives her right of cross-appeal as to the remainder. 5 W. R. 5.

589. When a family is joint, the *onus* of proving separate acquisition is on the person making the allegation, the presumption being in favour of the opposite party. 1 W. R. 334.

590. The presumption of the Hindu law, in a joint undivided family, is, that the whole property of the family is joint estate, and the *onus* upon a party claiming any part of such property as his separate to establish that fact. 6 M. I. A. 53; 6 W. R. 70.

591. The presumption is, that a Hindu family remains undivided the *onus* is upon a party claiming, as upon a partition, to prove division of the joint estate. 9 M. I. A. 66.

592. When possession of the legal heir has been prevented and the course of inheritance changed on the ground of an adoption, the *onus* is clearly on the party setting up that title against the heir's entrance, to

prove the adoption both as regards the power of the adopter and the fact of adoption. 11 W. R. 468.

593. The party who seeks to exclude one of the heirs to property from a share of the inheritance, is bound to show the cause of the exclusion. 22 W. R. 348.

594. Where a claim is founded on an alleged partition between the members of a Joint Hindu family, the *onus* is on the claimant to prove the alleged partition. 24 W. R. 365.

595. Whilst the members of a Hindu family are found in possession of joint ancestral estate, all property in the possession of any member of the family is to be presumed to be joint, and it is incumbent on the member who claims property in his possession as his separate property to prove his sole title to it. 3 N. W. P. 217.

596. The burden of proving property (the subject of a gift by a Hindu widow) to be *stridhun*, rests with those claiming under her. 1 W. R. 107.

597. Suit against a brother's widow for contribution in respect of a decree for rents from 1259 to 1264 under a lease acquired in 1225 by the father of the parties in the name of the plaintiff before the family separated in 1258. Held that the *onus* of proving that the lease was not joint was on the party who set up the plea that it was the self-acquired property of one member of a joint family. 6 W. R. 35.

598. A person who seeks to bar one who is *prima facie* the legal owner by evidence of ratification or of facts cogent enough to prove one not a formal to be a substantial party must make and prove such a case, for he is one who seeks to displace a legal title. 2 M. H. R. 428.

599. Where a party claiming a right of pre-emption impugns the correctness of the price stated in the deed of sale, the burden of proof is on him to show that the property had in fact been sold below the stated price. W. R. S. N. 304.

600. Where a party purchases at an execution-sale, the rights and interests of a lakhirajdar, another claims a mowrosee tenure in the property so purchased, the claimant is bound to establish his mokururee title. 19 W. R. 286.

601. In order to get rid of the effect of a Collector's decision in favour of an intervenor under section 77 Act X of 1859, the party entitled must bring a suit to establish his title, it being not enough for him merely to establish a vague allegation of dispossession and throw it upon the defendant to prove title. 11 W. R. 573.

602. Where by an old pottah lands forming part of a zemindary had been leased at a specific rent, there being no words in the pottah importing the heriditary and istemrari character of the tenure, the absence of such words may be supplied by evidence of long uninterrupted enjoyment, and of the descent of the tenure from father to son, that heriditary and istemrary character may be presumed.

To rebut the evidence afforded by long uninterrupted ... and the descent of the tenure from father to son, it lies upon the party asserting the holding to be from year to year only and determinable at will, to prove such assertion. 2 N. W. P. 3[illegible]

603. A party justifying a title so obtained against a minor must show not only that he was acting honestly in the transaction, but that facts existed at the time of the mortgage such as would reasonably support the conclusion that there was a necessity for the alienation, and that the mortgagor had authority to give a good title as the minor's agent. 22 W. R. 119.

604. Suit to recover the amount of principal and interest upon certain pecuniary transactions set forth in an agreement, alleged to have been executed by the defendants' father in favour of the plaintiff, for moneys advanced by him, and also upon the defendants' own promise after his father's death to pay the amount due from his father. Defence, first, that the agreement sued upon was a forgery; and, secondly, a denial of the promise of payment. Upon appeal (reversing the decree of the Sudder Dewany Adawlut at Madras), the Judicial Committee, without declaring the agreement to be a forgery, dismissed the suit upon the ground of failure of proof to support the claim. 7 M. I. A. 224; 3 W. R. P. C. 50.

605. Act XXX of 1858, of the Legislative Council of India, for the administration of the estate, and payment of the debts of the late Nabab of the Carnatic, empowered the Supreme Court of Madras, to investigate in a summary manner claims against the Nabab's estate. Held, that the provisions of that Act not only limited the extraordinary remedy which it gave to certain defined classes of debt, but threw upon a claimant more than the ordinary burthen of proof; by compelling the holder of any written acknowledgment, or security to prove the actual consideration given for it; and upon those claiming the price of the goods delivered, proof of the fair and actual value of such goods. 9 M. I. A. 466.

ONUS PROBANDI (On Collector.)

606. A Collector cannot extricate himself from the burden of proving his claim to property in his custody by illegally seizing such property. 20 W. R. 228.

ONUS PROBANDI (On Debtor.)

607. The presumption is in favour of a decree-holder, who in execution of his decree attached the share of his debtor, one of five brothers, in a joint property, that the property is undivided, and the *onus* is on the debtor to show that there had been a partition of it. 18. W. R. 258.

ONUS PROBANDI (On Defendant.)

608. The *onus* is on the defendant to impeach, and not on the plaintiff to call evidence to support an Ameen's report. 2 W. R. Act X. 1.

The defendant having pleaded payment was bound to prove it 155.

610. Where a defendant admits the cause of action and pleads payment, he must prove that the claim which is admitted has been discharged by payment. 17 W. R. 509.

611. Where defendant, in a suit for arrears of rent alleges remission *onus* probandi lies on him in regard to the remission. 9 W. R. 239.

612. The *onus* of showing that the admitted rental was not recovered during the period of A's wrongful possession is on A. 18 W. R. 251.

613. In a suit for enhancement where the defendant pleads that rent had been assessed on lands covered by hedges and ditches and forming boundaries between fields, and that according to custom such land was not liable to pay rent at all, the *onus* is on the defendant to prove the custom. 6 W. R. Act X. 46.

614. In a suit for enhancement, the burden of proof that a tenure is protected under section 16 Act X of 1859 is on the defendant, and it is only for the plaintiff to rebut any presumption which the defendant may make out under that section. 12 W. R. 320.

615. In a suit to recover possession, when plaintiff proves possession and illegal dispossession the *onus* of proving the title is shifted upon the defendant in the first instance; and if the latter establishes his title, the plaintiff must then be required to prove his. 9 W. R. 11.

616. Where a plaintiff has the general title to the property in suit and the defendant sets up an interest as mokurureedar, the *onus* is with the defendant. 19 W. R. 188.

617. In a suit for enhanced rent of a talook the existence of which as an ancient talook, is undoubted, and in which the only question is whether the rent is fixed or variable, the *onus* is first on the defendant to prove that he has held at a uniform rent for 20 years, and (if the defendant prove so much) then on the plaintiff to prove that the rent has varied since the permanent settlement. 1 W. R. 280.

618. A defendant is entitled to insist that the plaintiff shall prove his right by the best available evidence *e. g.*, the production of a ticca-lease upon the terms of which the claim is alleged to depend entirely. 19 W. R. 210.

619. Where a plaintiff sues for enhancement on the ground that the defendant did not pay the rents paid by others in the neighbourhood for similar lands, and the defendant denies his liability to pay such rents owing to his having mokururee pottahs, the *onus* is on the defendant to prove those pottahs. 6 W. R. Act X. 39.

620. Where a plaintiff, a Zemindar, sues to set aside a mokurrurce

deed set up by the defendant and to recover possession of the lands covered by the deed, it lies upon the defendant to defeat that right by proving the grant of an intermediate tenure, and the case must be decided, not upon the defects of the plaintiff's claim, but upon the right of the defendant to hold under a perpetual and hereditary tenure at a fixed rent. 12 W. R. P. C. 6.

621. In a suit against a Zemindar to reverse the sale of a *putnee* tenure held under Reg. VIII of 1819, on the ground of non-service of notice, the *onus* of proving service lies on the defendant, according to the spirit of S. 106 of the Evidence Act. 21 W. R. 397.

622. Where the plaintiff sued to recover money lent, relying upon a *samadaskat*, or acknowledgment of debt given by the defendant: Held that section 9 of Reg. V of 1827 contained the rule of law applicable to the case, and that the *onus* lay on the defendant to prove that he had not received full consideration for the acknowledgment of indebtedness which he had subscribed. 5 B. H. R. A. J. 81

623. The plaintiff sued on a bond made in his favour by the defendants which he alleged had been stolen by the defendants. The defendants, while admitting the execution of the bond pleaded payment and that the bond had been returned by the plaintiff to them. They did not produce the bond, nor did they offer any evidence of the alleged payment:—Held that, as the defendants admitted the bond and pleaded payment, the burden of proof of such payment lay on them. 8 B. H. R. A. C. J.

624. Plaintiff sued defendant upon a bond which recited the fact of due consideration having been paid at the time of execution. Defendant admitted the execution of the bond, but pleaded that consideration had not been paid. Held, that it was upon the defendant to prove that the facts stated by him in the bond were really different from what they were stated to be. 10 W. R. 132.

625. Where a suit was brought upon two native bonds executed by the defendant for the principal and interest reserved, and the bonds contained a statement that the principal had been borrowed and received in cash:—Held that it was open to the defendant to show, by evidence, that only a portion of the principal sum had been received by him. 2 M. H. R. 174.

626. Where a defendant admits the execution of a document upon which he is sued, the *onus* lies on him to get rid of the effect of such admission. 1 B. H. R.

627. In a suit to recover property which was sold by plaintiff's while plaintiff was a minor, the burden lies upon the defendants to show that there was such a necessity for the sale as would serve to give the guardian legal authority to sell, or that upon due inquiry defendants were reasonably led to suppose that such necessity existed. 21 W. R. 287.

628. In a suit for a declaration of a judgment-debtor's rights in a portion of certain joint landed property, where defendant pleaded that it was his self-acquired property: Held, that the *onus* of proving self-acquisition was on defendant, and the Lower Court was right in not fixing an issue on a plea of separation not taken in the written statement. 10 W. R. 28.

629. In a suit for a declaration of plaintiff's reversionary title as heir to his late uncle's property, and for reversal of a deed of sale from that uncle set up by the defendant, the widow not having been made a party to the suit and her consent to, or dissent from, the alleged conveyance not having been ascertained, the issue tried was whether the deed was genuine and whether defendant has possession under it: Held that the onus was rightly placed on the defendant. 15 W. R. 96.

630. The plaintiffs' ancestors having been declared by a decree of the Peshwas' Government in A. D. 1722 to be entitled to the whole of the Patilki Watan of Panderai; and the defendants having produced a watanpatra from the Raja of Suttara in A. D. 1742 in favor of their claim to a half-share, but being unable to show that their ancestors had any concern with the watan for a period of 96 years subsequent thereto—during which the plaintiffs' ancestors were recognized as the sole owners:—Held that the District Judge did not act contrary to law in throwing upon the defendants the burden of proving possession as proprietors for more than 30 years without interruption before the institution of the suit. 3 B. H. R. A. J. 49.

631. J. obtained a decree against A, his sister W, and B, for mesne profits in respect of a share of property which they had been wrongfully keeping J from enjoying. After some further litigation, which resulted in confirming this decree, A sued B and other co-judgment-debtors to recover money which he alleged having been obliged to pay in satisfaction of the decrees against himself and them. B in answer to the claim said, that during the whole time he was in possession he held by a title derived from A and the other judgment-debtors. A did not dispute the fact that B. had entered into possession as his mortgagee, but maintained that the right of possession under the *zur-i-peshgee* had terminated before the origin of J's claim: Held that it lay upon A to prove that it had thus terminated. 19 W. R. [illegible]

In a suit under the Civil Procedure Code in which the plaintiffs allege that the defendants wrongfully and forcibly took away and were detaining timber which had been in the plaintiff's constructive possession and to which they are entitled, and the relief asked for is the restitution of the timber with costs of suit, if it be proved that the defendants had forcibly or wrongfully taken property in the plaintiffs' actual or constructive possession, it would then be for the defendants to show that they were entitled to the timber. In the present case, the plaintiffs having failed to show their possession of the timber or the forcible or wrongful dispossession or conversion of the goods, and the defendants

having made good their title to the timber,—Held that the judgment should have been for the defendants. 7 W. R. 286.

633. The plaintiffs having purchased from a mortgagee after foreclosure, and the mortgagor and mortgagee both admitting their title. Held that the *onus* of proving that the transaction was a fraudulent one, was on the defendants who alleged it to be so. 1 W. R. 327.

634. Where a plaintiff in a suit files documents relating to lands which are not identified with the land in dispute, the mere fact of his filing them does not throw the *onus* on the defendant. 10 W. R. 237.

635. In a suit by a judgment-creditor to recover the amount of certain decrees by attachment and sale, and to have a certain deed of bye-mokasa which was set up by the judgment-debtor's wife, set aside as executed in fraud of creditors; where plaintiff shewed the existence in the mind of the judgment-debtor of a sufficient motive for the fraud, and also that the said debtor was in the management of the estate claimed and in the receipt of its rents, it was held that plaintiff had started a *prima facie* case which shifted the *onus* on the defendant to prove the *bona fides* of the deed. 15 W. R. 507.

636. Plaintiff sued for confirmation of possession and registration of certain property which had been mortgaged to him by defendants. The transaction on the face of the deed was an absolute sale; but an *ekrar* was executed at the same time as the mortgage, which reserved the equity of resumption to the mortgagor. This *ekrar* was made over to the defendant, the mortgagor. Plaintiff's allegation was that the *ekrarnamah* was returned to him by the mortgagor who thus surrendered the equity of redemption. Defendant alleged that the *ekrar* had been lost, and had somehow found its way to the plaintiff.

Held, that the presumption of law was in favor of the plaintiff who had possession of the *ekrar*, and that the *onus* of proving its loss lay upon the defendant. 11 W. R. 151.

637. In a suit for confirmation of possession of, and declaration of title to, land alleged to have been purchased at a private sale from the wife (SS) of a judgment-debtor, who had come into possession of the land by gift from her husband, defendants claimed to be *bona fide* purchasers from (SS), to whom they alleged the property really belonged and who had been all along in possession. The substance of the defence was that, "even granting that any such papers" as a *hibba* and a deed of sale "were written between the parties, this can avail the plaintiff nothing, as the deeds were fraudulent."

Held, that there was no such admission on the part of the defendants as shifted the burden of proof on to themselves. 11 W. R. 328.

638. In a suit to recover possession, the *onus* is on the defendant who pleads that he is a *bona fide* purchaser for value without notice of plaintiff's title, to make out that plea. 18 W. R. 151.

639. In a suit for khas possession against a lessee who sets up a title plaintiff's admitted right as Zemindar, it is for defendant to the title so set up. 23 W. R. 291.

640. In a suit for possession, where plaintiff had a clear title as heir to her deceased husband as against defendant: Held that the latter was bound to shew adoption or some other matter which would prevent the plaintiff from succeeding. 9 W. R. 439.

641. In a suit to recover possession, where defendants plead limitation and plaintiff proves that the commencement of the possession of the party through whom defendants claim, was as tenant, it is for those who set up the plea of limitation to show when the nature of that possession was changed, and how it became adverse. 12 W. R. 250.

642. In a suit to recover possession on the allegation of previous possession and forcible ouster, both being denied by defendants, who set up a title of their own, it is for plaintiffs to prove the alleged ouster. If they do so to the satisfaction of the Court, the burden of proof will be on the defendants to show the title on which they ousted the plaintiffs. Should the defendants prove such a *prima facie* title, then it will be the duty of the Judge to call upon the plaintiffs to establish their title. 12. W. R. 472.

643. In a suit for possession of a portion of land on the allegation that it had belonged to plaintiff as his ancestral property up to the date of his being ousted, where defendant admitting the alleged possession, contended that it had been not that of an owner, but only permissive possession as that of a tenant: Held that the burden of proof lay on the defendant. 15 W. R. 32.

644. In a suit by mortgagees, under a *zur-i-peshgee* mortgage, not only for possession, but also for setting aside a mokurruree lease, which was alleged to have been granted by the mortgagor prior to the mortgage, and under which defendants had been in possession for some time in accordance with a Magistrate's order:

Held, that the *onus* was on the plaintiffs to give some evidence to impeach the validity of the mokurruree; but this having been done, and a strong *prima facie* case made out, the *onus* was shifted, and it became incumbent on the defendants to show that the mokurruree was executed before the *zur-i-peshgee*, and that it was granted *bona fide* for a real consideration, and intended to be operative as between the mortgagor and the lessee. 23 W. R. P. C. 111.

645. In a suit to recover possession of a share of joint property sold in execution, on the ground that the judgment-debtor (plaintiff's brother) was the owner of only a portion, where defendant pleaded that the whole property had been made over by the grandfather, by a deed of gift, to the judgment-debtor: Held that the plaintiff was entitled to the presumption of co-partnership, and the *onus* lay with the defence to prove that the property had passed absolutely to the j
12 W. R. 7,8.

646. In a suit for possession of certain properties on the ground that they were joint and that plaintiffs had been wrongfully kept out of their share after a separation between them, and in which defendants averred that the family has separated long prior to the time alleged by plaintiffs and that the properties were acquired solely by their ancestor:

Held, that until the defendants gave proof of the separation alleged by them, the presumption was in favour of the family having been joint and that the *onus* of proving self-acquisition was on the defendants. 12 W. R. 124.

In a suit to recover possession of land within plaintiff's estate, in which defendant sets up a rent free title, all that plaintiff is required to show is that either he or his predecessor had received rent for the land at some time subsequent to the perpetual settlement, in which case the *onus* of proving title falls on the defendants. 15 W. R. 299.

648. In a suit by a daughter for property left by her father in which the defendants relied upon certain admissions said to have been made by plaintiff relinquishing the share in the inheritance left by her father, and in which they also set up a will of the father conveying the property to others, the Lower Court should have enquired into the genuineness of the will and required the defendants to prove that the admissions, which plaintiff impugned emanated from her or from some one duly authorised by her to make them. The mere fact that the admissions were contained in statements filed in a Court of justice in her name, does not necessarily prove that they were made by her. 8 W. R. 468.

649. In a suit for a moiety of money recovered in execution of a decree for the benefit of a joint estate, where the defendant alleged that the money was his separate property, it was held that the *onus* of proof was on the defendant, and that the mere fact that the plaintiffs had permitted the defendant in his capacity of manager of the joint family, to draw out monies in execution of a decree without objection on their part, would not raise the presumption that the money did not come from the stock, and shift the burden of proof upon the plaintiffs,—Held also that, as the plaintiffs permitted the defendant to draw out this money without objection on their part in 1862, and made no effectual demand till they sued in 1268, though a separation took place in 1856, they were entitled to interest only from date of suit, and not from the date that the money was drawn out and appropriated by the defendant. W. R. S. N. 170.

A defendant who pleads plaintiff's minority as a bar to the suit, is bound to substantiate the plea. 23 W. R.

A suit by the plaintiff's guardians for the plaintiffs' mother's share in certain dower resulted in a decree for 62,913 rupees, calculated on the allegation in the plaint that such share was 1-3rd of the entire amount of dower. That suit having been sold by the plaintiff's guardians for the alleged sum of 51,000 rupees, the plaintiffs brought the present suit to set aside that sale as collusive. Held that it was in-

cumbent on the defendants in this suit to prove that they paid the 51,000 rupees to the plaintiffs when they came of age, or at least that the money reached the plaintiff's hands when they came of age.

A compromise set up by the defendants in the present suit been rejected, a decree was given to the plaintiffs for the sum of rupees 62,913 awarded in the original suit. That decree was upheld in appeal; but as it was alleged that on the facts stated in the plaint in the original suit the plaintiffs' mother's share of the dower was 1-8th and not 1-3rd, the Privy Council held that plaintiffs ought not to benefit by that mistake, if it was a mistake, and they accordingly left it to the Lower Court to enquire into that point and to let execution go for the 1-8th or the 1-3rd share, according as the fact might turn out. 16 W. R. P. C. 22.

652. In a suit to recover possession of land under a mokurureo lease granted to plaintiff by the Zamindar (defendant who admitted its validity) from the other defendant who had been in possession 20 years, and who also claimed a mokuraree interest. Held, that the *onus* lay with the substantive defendant to show that his lease was mokururee. 10 W. R. 9.

653. In a suit to recover possession of land claimed by virtue of a sunnud from a Rajah, in which plaintiff gave *prima facie* evidence of the authenticity of the sunnud and subpœnaed the Rajah to prove it; it was held, that the Lower Court did very right in considering plaintiff's testimony to be strengthened by defendant's (Rajah's) refusal to come into Court with his own story; and that the *onus* lay on the Rajah to rebut the plaintiff's evidence or to prove minority or other personal disqualification. 8 W. R. 453.

654. In a suit to recover khas possesion where the defendant's plea is that his holding, is a permanent holding, it is not sufficient for him to show that his vendor had some right; it is upon him to show that it was the exact permanent right at issue between the parties. 11 W. R. 162.

655. In a suit to recover possession of certain land described as *khamar*, of which plaintiffs had been forcibly dispossessed, Defendants claimed to hold the land by way of permanent jote for 40 years, and contended that plaintiffs had no right except to receive rents. Held, that as defendants admitted the ownership to be with the plaintiffs, and prayed to be allowed to hold possession under the jote tenancy, the burden of proof lay with the defendants. 22 W. R. 417.

656. In a suit for possession where plaintiff claims under a pottah, the execution of which is not denied by the defendant, whose contention is that the lessor had no power to grant it, the *onus* is on the defendant to prove his plea. 15 W. R. 208.

657. In a suit by the lessee of the purchaser of the rights and interests of the first defendant to obtain possession of some portions of land alleged to fall within the share of the Zemindary so purchased, defendants contended that the plots which were the subject of suit, although falling within the ambit of the Zemindary, did not in fact from

[illegible] of it, but where lakheraj lands belonging to themselves by a [illegible] independent of the title to the Zemindary. The evidence showed the principal defendant to have been in receipt of the rents and profits of the land in suit, as well as of his share of the Zemindary.

Held that the *onus* lay upon the defendants to show the alleged independent title; failing to do so, the *prima facie* title made out by the plaintiff ought to prevail. 14. W. R. 226.

658. Suit by a Lakherajdar to set aside an Act IV award retaining the defendant in possession of certain lands belonging to a Hindu Temple. The plaintiff alleged that the defendant's brother was cook to the Temple and that, on his death, the land in dispute (which formed his wages) was given to another. The defendant claimed the land in hereditary right as servant of the Temple. Held that the *onus* of proving a right to the possession of the land of which the plaintiff was the acknowledged owner, lay on the defendant who claimed such right. 2 W. R. 152.

659. Where a plaintiff sues as heiress-at-law of her father, and the defendant sets up a title by adoption, the *onus probandi* is on the defendant. 4 W. R. 78.

660. In a suit by a Hindu widow to recover a share of porperty alleged to have been inherited from her husband (J), and which had been mortgaged by her husband's brother (B), and sold under a decree obtained on the mortgage, the question was raised whether the money for which the property was mortgaged had been borrowed by B for his own private use or for the benefit of the family: Held that the *onus* was on the defendant to show that the plaintiff had derived any benefit from the money. 22 W. R. 171.

661. In a suit for an undivided share of property claimed by plaintiffs as heirs of the deceased owner, where defendants pleaded possession under a *touseentnamah* or will: Held that the Court could not tell how far the will was valid or invalid under the Mahomedan law, which allows a testator to give away from his heirs only—one-third of his property, and therefore the *onus* was on the defendant to furnish a complete statement of the testator's property at the time of his death; failing which, plaintiffs' claim must prevail. 22 W. R. 400.

662. Suit by widow of defendant's brother for half share of an ed joint ancestral property: Held, under the circumstances of the case (the plaintiff making a state claim) that very moderate proof was sufficient from the defendant. The defendant's evidence and the plaintiff's own conduct established that the original estate which was the nucleus of the subsequent acquisitions was the mother's estate and the acquisitions of the defendants made after the mother's death upon the estate to which he had succeeded after her. 3 W. R. 98.

663. Suit by a late Rajah's brother for maintenance allowance, which the present Rajah opposed on the ground that, as the plaintiff was no longer the ruling Rajah's brother, his allowance must be diminished. Held that the *onus* was on the defendant to prove a custom of entitling

him to diminish the allowance heretofore enjoyed in right of plaintiff's position in the family. 6 W. R. 91.

664. The defendant having claimed an easement over plaintiff's water, the burden of proof was on him to show that he acquired it by grant or user. 17 W. R. 281.

665. In a suit to recover possession of a tank which was included in an undivided mehal of which plaintiffs were the shareholders, where defendants contended that the tank had for more than 12 years before the suit been separate and in their separate possession and enjoyment. Held, that as there was *prima facie* proof that the shareholders, or certain of them, had enjoyed the use of the tank, the burden lay upon the defendants to prove their separate enjoyment. 12 W. R. 468.

666. Where a defendant pleads a putnee tenure, the *onus* of proof is on him in the first instance. But when he sets up and proves by credible evidence the creation by the plaintiffs of an inferior tenure entitling him to hold the estate, he has discharged the burden, and it then lies on the plaintiffs to displace or explain away that evidence. 6 W. R. 25.

667. In a suit by a Mahomedan widow against the brother of her deceased husband for her share of the property of her husband, the defendant set up a *tumliknamah* by which the deceased conveyed the property away to the son of the defendant. Held, that the burden of proof was on the defendant, and that he was bound to adduce the very strictest proof of the conveyance, as it cut away property from the natural heir. The *tumliknamah* was rejected, having regard to its terms and to the probabilities and facts of the case. 9 W. R. 142.

ONUS PROBANDI (On Hindu Widow.)

An admission by the widow's husband that the lease was the joint property of himself and the plaintiff, though not an estoppel, was held to be good evidence to be rebutted by the widow. 6 W. R. 35.

ONUS PROBANDI (On Holders of Property).

669. Where an heir's title to an estate is uncontested and his possession is only obstructed by an alleged conveyance on the part of an [illegible], it lies upon the party holding possession, and who causes the obstruction, to prove that such a conveyance has taken place. 14. W. R. 276.

670. In 1813 certain lands were dedicated by deed to the religious service of an idol, and in 1820 that dedication was confirmed in a partition deed. The plaintiff sued to set aside alienations of the property and to have the trusts of the dedication deeds declared. The holders of the property alleged that a subsequent partition deed had been executed in 1845, and that the dealings of the family had shown an intention to revoke the trusts. Held, that it lay upon the holders to prove the revocation of the trust, and that, on failure to do so, they could not set up the law of limitation in answer to the plaintiff's suit. 10 B. L. R. [illegible]. C. 19.

ONUS PROBANDI (On Impugners.)

671. Where a decree in execution of which formal possession has been obtained, is impugned by the party in actual possession as fraudulent and collusive the *onus* lies on the impugners to prove their allegation. 23 W. R. 329.

672. Where the authenticity and *bona fides* of a *hibba* were called into question, on the ground that, at the time the instrument was executed, the executants were in a state of indebtedness, and registration was delayed until the making of certain decrees against them. Held that it lay on the parties whose intention was impugned to give satisfactory evidence of a satisfactory kind of the *bona fides* of the suspecious transaction. 24 W. R. 292.

ONUS PROBANDI (On Intervenor.)

673. In a suit to recover possession of certain property from plaintiff's vendor (who did not substantially resist the claim) a third party, who came in and claimed the property was made a defendant. It was held that the *onus* of proof as against the plaintiff lay entirely on the intervenor. 10 W. R. 53.

674. In a suit for rent under a kabooleut if a third party intervenes and supports the defendant's case that the rents have been paid not to the plaintiff, but to the intervenor, the *onus* of proving such previous receipt and enjoyment is altogether on the intervenor, and until his intervention is disposed of, the plaintiff need not prove his title or the kabooleut. 11 W. R. 319.

675. Where, under a ticca pottah granted to him by several shareholders, plaintiff claimed the share of rent said to be due to him by defendant (another share-holder) in respect of the occupation of a certain quantity of the *zeraet* land which constituted the holding of the combined shareholders, and defendant objected that the plaintiff's share was less than what he stated it to be.

Held, that the burden of proving the extent of his share lay on the plaintiff. In such a case, even a ryot resisting the claim of a shareholder to rent would be entitled, if he had good reason to do so, to make the plaintiff prove the amount of his share; and the only *onus* on an intervenor would be to prove *bona fide* possession. 19 W. R. 284.

ONUS PROBANDI (On Judgment-creditor.)

676. Where a judgment-creditor admits having obtained
of a portion of the land without opposition from the judgr
the *onus* lies on him to show that he was unable, nevertheless, to obtain
of the remainder. 21 W. R. 241.

ONUS PROBANDI (On Landlord.)

677. A landlord claiming rent from a ryot holding under a lease, for a period after the expiry of his lease, is bound to prove

the latter held on subsequently to the term of the lease. 15 W. R. 454.

678. In a suit for a kaboolent at an enhanced rate for land which defendant claims as lakhiraj, he is not bound to give *prima facie* proof of the land being lakheraj before the *onus* is put on the landlord. 11 W. R. 35.

679. In a suit for possession of alleged lakheraj land, if the alleged lakherajdar proves possession as purchaser of the alleged lakheraj land, the Court ought not to put upon him the burden of proving a title; but if the Zemindar wishes that point to be tried in this or another suit, he must accept the *onus* of proving that the lakheraj is held on an invalid title, by proving that he collected *mal* rents from the land, and that he is not barred by limitation. 6 W. R. 294.

680. In a suit to recover possession of lands which plaintiffs alleged to be lakheraj, and of which they had been dispossessed by the defendants (Zimindars),—Held, that as plaintiffs had purchased the land as lakheraj, and had been admittedly in possession of them as such for a very long time, it was for the Zemindar, who pleaded a right to oust them summarily under section 10 Regulation XIX of 1793, to prove that the lakheraj title was invalid as having been created subsequent to 1790. 10 W. R. 278.

ONUS PROBANDI (On Mortgagee.)

681. Where joint family property is mortgaged by one parcener, in order that it may bind the other co-parceners, the mortgagee must prove affirmatively that the mortgage was assented to by the other co-parceners, or was necessary for family purposes. 11 B. H. R. 283.

682. It is the mortgagee's duty to keep regular accounts and the *onus* lies in the first instance upon him. If he has not kept proper accounts, the presumption will be against him; but this does not mean that all statements of the mortgagor against him must therefore be taken as true. 9 W. R. 275.

ONUS PROBANDI (On Objectors).

683. Where a defendant objects under Act VIII of 1859 section 7, that plaintiff omitted in a former suit to include the portion which he now claims, and in respect of which he then had a cause of action, the objection being one of fact, the burden of proof lies with the objector. 19 W. R. 430.

ONUS PROBANDI(On Owners).

684. The taking of a steam vessel on a trial trip from Mazagon to the sea and back again is a moving of such vessel within the meaning of section 12 of Act XXII of 1855. For such a trip, therefore, the employment of a pilot is compulsory.

Where the employment of the pilot is compulsory on board a vessel, a ---- pilot being on board, an accident happens through negligence in

the management of the vessel, it lies upon the owners, in order to exempt themselves from liability, to show that the negligence causing the accident was that of the pilot. If such negligence is partly that of the master or crew, and partly that of the pilot, the owners are not exempted from liability.

If it be proved on the part of the owners that the pilot was in fault, and there is no sufficient proof that the master or crew, were also in fault in any particular which contributed, or may have contributed, to the accident, the owners will have relieved themselves of the burthen of proof which the law casts upon them. 6 B. H. R. O. J. 98.

ONUS PROBANDI (On Partner).

685. The burden of proof that a creditor by agreeing to an arrangement whereby a firm indebted to him conveyed to two of the partners, thereof certain property in trust to pay off his and certain other debts thereby released the remaining members of the partnership, lies upon the parties who were originally liable to such creditor. 3 N. W. P.129.

ONUS PROBANDI (On Party making charge.)

686. Where a charge is made of want of *bona fides*, it lies upon the party making that charge to substantiate it by evidence satisfatory to those who have to decide the question. 21 W. R. P. C. 97.

ONUS PROBANDI (On Plaintiff).

687. The general rule of evidence is that if, in order to make out a title, it is necessary to prove a negative, the party who avers a title must prove it. 9 W. R F. B. 190.

688. In a suit for setting aside deeds, some evidence ought to be given by the plaintiff in order to impeach such deeds; and he is not entitled, merely on proof of heirship, to throw on the defendant the burden of showing a better title. 1 L. R. I. A. 192.

689. In a suit for setting aside deeds, some evidence ought to be given by the plaintiff in order to impeach the deeds he seeks to set aside. But in the case of sales or gifts made by a lady in such a position as that of the lady from whom defendant claims, the strongest and most satisfactory proof ought to be given by the person who claims that the transaction was a real and *bona fide* one, and fully understood by the lady. 21 W. R. P. C. 341.

690. The mere fact that an allegation is not traversed does not relieve a plaintiff from the burden of proving his case. 7 B. H. R. A. C. J. 136.

691. Any laches of a defendant does not absolve the plaintiff from fully proving his case. 1 W. R. 120.

692. A plaintiff suing for a declaration that an adoption is invalid, is bound to prove the invalidity. 9 W. R. 464.

In a suit brought to have it declared that a document filed in a

former suit by the defendant is spurious, the *onus* of proving such gation is on the plaintiff. 20 W. R. 415.

694. The *onus* in a suit in which the plaintiff seeks to obtain a declaration that the defendants held a tenure under him lies on the plaintiff, who must prove strictly the title under which he seeks that declaration. 9 W. R 154.

695. In a suit for a declaration that a document propounded by the defendant is false it lies upon the plaintiff to prove that allegation. 11 W. R. 280.

696. Where a plaintiff brings a suit for a declaration of his title owner he is bound to establish his title affirmatively. He is in the same position as any other plaintiff and must make out his case, and the *onus probandi* that he is in possession as owner is upon him. 2 M. H. R. 171.

697. In a suit for a declaration that defendant had no right of way over certain land belonging to plaintiff, where it appeared that defendant had obtained an order from the Magistrate under the Criminal Procedure Code (Act XXV of 1861 section 320), it was held that the *onus* of proving an easement did not lie with defendant, but that it was for plaintiff to prove that he was entitled to *exclusive* possession. 21 W. R. 140.

The plaintiffs, on being served with notice of foreclosure by the
s, brought a suit for a declaration that the mortgage was not
Held that the *onus* did not lie on the plaintiffs to prove the fabrication of the mortgage-deed. 6 W. R. 69.

699. In a suit to have it declared that an adoption which has long taken place and has acted upon, and in virtue of which defendants are in possession, is a fraudulent and false adoption, the *onus* lies on the plaintiff to make out, to some extent at any rate, the fraud and falsehood. 21 W. R. 84.

700. Suit by an executor of an alleged adopted son of a party, upon a bond executed in favour of that party, for an account (including interest) below 500 rupees. The defendant having questioned the plaintiff's title. Held that it was sufficient for the plaintiff either to show that he had obtained a certificate under section 2 Act XXVII of 1860, or to prove that he was in *de-facto* possession of the deed, and that the Lower Appellate Court acted beyond jurisdiction in directing an enquiry into the plaintiff's *de-jure* title. 8 W. R. 24.

701. An admission by one defendant against another, which admission the Court finds to be collusive, cannot relieve the plaintiff from the burden of starting his case against the repudiating defendant, nor can it shift the burden of proof to the shoulders of the latter from off the plaintiff. 6 W. R. 299.

When a defendant pleads limitation, the *onus probandi* is on the plaintiff. 1 W. R. 2

703. In a suit for possession, it is always for the plaintiff to the bar of limitation, whenever that bar is set up by the defendant in possession, although the latter's possession is not admitted to have existed for 11 years. 14 W. R.

704. Where limitation is set up, the *onus* is on the plaintiff that he has had possession of the share, or received payments on account of it, within 12 years from the institution of the suit. 19 W. R.

705. Where limitation is set up in answer to a suit for possession it does not lie upon the defendant to disprove plaintiff's possession; but it is the duty of the plaintiff to show that he has been in within twelve years before the commencement of the suit. 21 W. R. 79.

706. In a suit for a share of the property of a deceased minor, mitted to have been instituted ten years after her death, the *onus* was held to be on the plaintiffs to prove that their suit had been brought within twelve years of the date of such death. 19 W. R. 209.

707. Where a defendant pleaded partly title and partly purchase, but denied that the plaintiff's father or ancestor had been in possession of any portion of the land in dispute for a very long period, and asserted his own possession on ancient titles. Held that the *onus* of proving possession within the period of limitation lay on the plaintiff. W. R. S. N. 107.

708. In a suit to recover possession, a plaintiff is bound not to show that he had undisturbed possession for twelve years before he sued, but that his cause of action arose whithin that period. 24 W. R. 417.

709. In an action of ejectment to recover real estate, the plaintiffs claimed as heirs. The issue directed by the Court was, whether the party in possession, under a decree made in a summary suit, pursuant to the Act XX of 1841, was legitimate. In such circumstances held, that as the title of the plaintiffs depended upon the illegitimacy of the defendant, they were bound to prove by sufficient general evidence, their heirship, in order to throw upon the defendant the *onus* of proving his legitimacy.

The evidence upon that issue being unsatisfactory, the case was remitted to India for further proof. 9 M. I A. 492; 2 W. R. P. C. 13.

710. In a suit to recover possession of property of which the plaintiff alleges he has been illegally dispossessed by the defendant, in which the defendant pleads limitation, the *onus* is on the plaintiff to prove that the cause of action accrued to him on a dispossession within 12 years of the commencement of suit. 6 W. R. 327.

711. Two *kistbundees* executed by judgment-debtors in favour of a decree-holder were brought by the parties before a Court, which ordered them to be entered in the register and then returned. Nearly 6 years after the date of the agreements, application was made for execution, several payments were shewn to have been entered on the back

of the *kistbundee*, though not made through, nor certified to, the Court. The judgment-debtors denied the payments.

Held that the plaintiff was entitled to prove the payments made, for the purpose of showing that his right to sue out execution under the *kistbundee* was not barred by limitation. 11 W. R. 232.

712. In a suit for possession, the defendant being admittedly in possession, and claiming to be so under a bill of sale dated 45 years ago, the plaintiff is bound to displace the defendant's *prima facie* title by showing that he has been in possession within 12 years prior to the suit. 1 W. R. 67.

713. The rule which, in cases where the defendant pleads lakhiraj lays on the plaintiff the *onus* of proving that the land is *mal*, is not inflexible but may be altered according to circumstances, as in this case where the defendant admitted plaintiff's title as landlord and never set up any plea of lakhiraj until years after the suit was brought when a second Ameen was deputed to the spot to make a local enquiry. 18 W. R. 191.

714. In a suit to recover possession of a quantity of rent paying land as per boundaries defined, where the defence is that the land is lakhiraj land, the property of the defendant independently of the plaintiff, it is not enough for the plaintiff to prove that the defendant's plea of lakhiraj is not made out: he is bound to show that he is owner of the particular land which he seeks to recover. 20 W. R. 457.

715. Although the papers on which the defendant alleges lakhiraj may be found to be forged, yet the plaintiff (if not estopped by his pottah from questioning alleged lakhoraj created subsequent to the pottah) is bound to show that the lands sought to be resumed are rent paying lands and (if held by the defendant as lakhiraj) that they are so held on a grant of date subsequent to his pottah. 1 W. R. 25.

716. The *onus* in a case in which the plaintiff is an ordinary zemindar, suing to assess lands which he asserts to have been illegally usurped or alienated by a defendant lakhirajdar subsequent to the permanent settlement, rests on the plaintiff. 8 W. R. 451.

717. In a suit for enhancement where the defendant pleads a lakhiraj holding as to a portion of the land, the *onus* is on the plaintiff to prove whether the disputed land ever paid rent. 6 W. R. Act X. 45.

718. In a suit to assess land which defendant proves that he purchased as lakheraj and of which he is in possession, the *onus* of proving that it is rent paying lies on plaintiff. 10 W. R. 117.

719. To entitle a plaintiff to recover enhanced rent for that portion of the land which the defendant pleads is lakheraj, the *onus* is on the plaintiff to prove that it is his *mal* land. If the plaintiff makes out a *prima facie* case, then the Court is to look, not to the validity of the defendant's title, but to his possession of the land as lakheraj. 6 W. R. Act X. 19.

720. Where plaintiff sued for declaration that certain lands ... lakheraj, on the ground that a defendant had obtained a decree in the Collector's Court against them for rent,—Held that the *onus* lay upon the plaintiffs to show that they were holding the land as true lakhiraj, and that the Collector's decree was wrong. 10 W. R. 188.

721. In a suit for rent alleged to be due under a particular arrangement, the existence of which is repudiated by defendant, it is for plaintiff to prove the arrangement. 8 W. R. 509.

722. In a suit for enhancement of rent where defendants plead that a parcel of it is debuttur land, the property of another party, the *onus* lies on the plaintiff to prove that the land is *mal*, even though the alleged owner puts forward no claim. 10 W. R. 204.

723. In a suit for rent where plaintiff claimed as moknrureedar, but in no way established his allegation that defendant was his tenant, the Lower Court was held to have acted illegally in going into defendant's case and giving plaintiff a decree because defendant had failed to prove his case. 10 W. R. 210.

724. In a suit for enhancement of rent upon a certain area of land which plaintiff alleged to be *mal*, defendant set up that a portion of that area was lakheraj and did not belong to plaintiff's Zemindary.

Held that plaintiff was bound to prove that he had received rent for the disputed portion before he could obtain a decree for rent for such portion.

—Is it sufficient that defendant's plea is a mere allegation of ij, or must such allegation be supported by *prima facie* evidence. 14 W. R. 285, 286.

725. In a suit for arrears of rent, and for ejectment in consequence of non-payment, where defendant challenged the rate claimed as well as plaintiff's right to sue alone, Held that the *onus* lay on plaintiff to prove his claim to the rate of rent sued for and to show that he was sole proprietor. 23 W. R. 289.

726. The *onus* in a suit by a landlord for enhancement under section 17 Act X of 1859, on the ground that the productiveness of the land has increased, rests on the plaintiff who must prove that the productiveness was increased otherwise than by the agency or at the expense of the ryot. 9 W. R. F. B. 26.

727. In a suit for enhancement of rent where defendant gives *prima facie* proof of a rent-free title, such as a proceeding of the resumption authorities releasing his lands under section 48, Regulation XIX of 1793, the *onus* is on the plaintiff to prove receipt of rent. 9 W. R. 103.

728. In a suit to recover rent at an enhanced rate, it was held that it lay upon the plaintiff to make out distinctly the different grounds on which he rested his right to enhance, namely excess of area, increase of

from the tenant's agency, and increase in the value of produce. 9 W. R. 65.

729. In a suit for arrears of rent at an enhanced rate after notice, it is incumbent upon the plaintiff to show that he gave the defendant proper and sufficient notice embracing good and legal ground of enhancement, and that the ground did in fact exist. Where the notice really serves its purpose, the suit cannot be dismissed on a mere technical objection. 20 W. R. 232.

730. In a suit to recover rent at an enhanced rate after notice upon grounds furnished by the first two clauses of S. 18 Act VIII (B. C.) 1869, where defendant pleaded that the land was mowrosee, held by him at a fixed rate of rent for generation after generation.

Held that defendant's failure to prove this plea was no bar to his setting up that he had earned the right of occupancy in land.

Held that plaintiff could not succeed proving the substance of each part of cl. 1, and that it was not enough to show that the rate paid by defendant was below the prevailing rate for adjacent land of a similar description and with similar advantages ; but it must also be shown that the prevailing rate was paid by ryots of the same class as defendant. 20 W. R. 416, 417.

731. The purchaser of an estate at a sale for arrears of revenue, after withdrawing a suit for arrears of rent, sued to eject the defendant from a piece of land on which his homestead was *i. e.*, to declare the land liable to assessment and to obtain khas possession.

Held that the *onus* lay with the plaintiff to prove that the land was *mal*, and that he and his predecessors had received rent for it. 23 W. R. 388.

732. In a suit for confirmation of possession of certain *lakheraj* and [illegible]*ee* land, and for a declaration that plaintiff has a *lakheraj* and *no*- title, the *onus* is on him. 17 W. R. 449.

733. In a suit for confirmation of possession of a share of ancestral property as the self-acquisition of two grand sons of the common ancestor : Held that plaintiff was bound in the first place to prove his allegation of self-acquisition, and also fully to show his possession. 10 W. R. 393.

734. In a suit for confirmation of right and possession in respect of lands alleged to be within plaintiff's permanently settled talook, where plaintiff incidentally remarked that defendant (as intervenor in a previous rent-suit) had claimed the lands as appertaining to another talook which plaintiff alleged had no existence.

Held that it was an error of law in the Lower Appellate Court to place on the defendant the *onus* of proving the existence of that other talook, [illegible] of following the usual and recognised course of requiring the to prove that the lands in suit belonged to his talooka. 10 W.

735. Held (Mookerjee J. dissentiente) that the rule that in suits for confirmation of possession by adjudication of title, the plaintiff is bound to prove that he was in possession at the time he preferred the suit. is not so inflexible a rule that it cannot be departed from; as, for example where plaintiff sues for confirmation of possession and proves that he was in possession for many years and until within a few months of the institution of the suit, he should not be required to bring a fresh suit, merely changing the prayer for confirmation of possession into one for recovery of possession. 15 W. R. 286.

736. A plaintiff who seeks to recover possession of lands on the allegation that they are situate in his estate, is bound to prove his allegation. 1 W. R. 220.

737. In a suit for possession of land, where plaintiff's title and previous possession are both denied, it is not proper for a Court to start with the case put forward by the defendant, the *onus* of proof being primarily on plaintiff. 14 W. R. 478.

738. In a suit for possession of land, on the ground that it belonged to plaintiff's talook where defendant pleaded limitation.

Held that the burden lay with the plaintiff to prove that he had possessed (*i. e.* enjoyed the land) within 12 years of the suit. 11 W. R. [illegible]

739. In a suit to obtain possession of certain lands on the ground that they had been assigned to plaintiffs by a partition made by the Collector:

Held, in the matter of certain of the plots which plaintiffs alleged to be included in particular *daghs* in the butwarrah chittahs, that as defendants denied that they were so included, it was on the plaintiffs to prove their allegation.

Held, in respect to a *dagh* in which plaintiffs were admitted to be entitled to a certain quantity of land, it was their business to prove that the particular lands which they claimed had been assigned to them by the butwarrah proceedings. 11 W. R. 337.

740. When a plaintiff alleges that he is in possession of property and asks for a declaration of his title only, the *bona fides* of that title being questioned by the defendant, it is for the plaintiff to make out that that title is really and substantially what it purports to be on the face of the deed on which he relies. 11 W. R. 4[illegible]

741. In a suit for ejectment and possession where defendant admitted that the tenure of certain lands which he formerly held had passed to the plaintiff, but denied that the lands in dispute were included in the tenure alleging that they were held by himself under another title:

Held, that it lay with the plaintiff to prove his case; and that the fact of the matter being peculiarly within the knowledge of the defendant did not vary the rule of law in respect to proof, and shift the on to the defendant. 11 W. R.

742. In a suit by a landlord to obtain khas possession where plaintiff's case is that defendant is holding under a lease whose term has expired, the *onus* is on the plaintiff to prove the determination of the tenure by efflux of time. 22 W. R. [illegible]

743. Where a party who asserts that he is in possession adducing any evidence in support of his title, sues for confirmation of title as against a *bona fide* purchaser for valuable consideration without notice from the party in whose name the property stood, who exercised acts of ownership and gave himself out to the world as the real proprietor, plaintiff cannot put the defendant to proof of his title till he has proved [illegible] own. 14 W. R. [illegible]

744. A talookdar who had purchased in execution sale the under-tenure of one of his tenants, sued him to obtain possession of the land contained in the purchased holding, from some of which he said he had been dispossessed, and in regard to the remainder of which his title was disputed. Held that the deputation of an Ameen was improper, and that the *onus* lay on the plaintiff to prove his case. 14. W. R. 190.

745. Where an unsuccessful claimant under section 246, Code of Civil Procedure sues for confirmation of alleged possession and adjudication of title, the *onus* in the first instance is on plaintiff, and an important question in the case is, who was in possession at the time of the attachment. 15 W. R. 202.

746. A party holding a decree for a share of a mouzah brought a suit for possession and damages on the allegation that he found the defendant in occupation of a part of the land on which indigo plants were standing, and permitted him to continue for a time when the plants would be removed, defendant promising then to give over possession, but that when the time came defendant refused to give over possession and was still occupying the land. Held that it lay upon the plaintiff to show wrongful occupancy on the part of the defendant. 15 W. R. 144.

747. In a suit to recover possession by the ostensible purchaser of an estate sold for arrears of revenue under Act I of 1845, where it was found that plaintiff had stood by ever since his purchase and had for 11 years allowed defendants to remain in possession and enjoy the usufruct as proprietors: Held, that the burden of proof was rightly thrown on the plaintiff. 14 W. R. 10.

748. Although the evidence of witnesses for the defendants as to possession is of no better character than those produced by the plaintiff as to dispossession, yet it lies on the plaintiff to make out his case, and as the probabilities of the case in this instance were against dispossession, it was held by the Judicial Committee, affirming the judgment of the *Sudder Dewany Adawlat*, that the plaintiff had failed to prove the dispossession of the defendants, which was necessary to maintain the [illegible] 8 M. I. A. 199.

749. The defendant having had an award under section 15 Act XIV of 1859, the plaintiff's allegation of possession and dispossession by the defendant required him specifically to prove those facts before the defendant could be called upon to prove his case. 17 W. R. 161.

750. In a suit between two rival Zemindars about certain lands hitherto occupied, but now relinquished, by Government for salt manufacturing purposes, the real question at issue was held to be whether these lands appertained to the Zemindary of the plaintiff or of the defendant; and as the latter was now in possession under a possessory award of the criminal authorities, the *onus* was on plaintiff to show that the lands belonged to his Zemindary. 17 W. R. 181.

751. In a suit for possession where plaintiff sets up a late purchase against a defendant whose title is derived from a sale in execution of a decree which was made on a mortgage-bond, and alleges that the earlier transaction was fraudulent, the *onus* is on the plaintiff to start his case by showing certain facts from which the Courts ought to infer collusion between the mortgagee and mortgagor. 23 W. R. 56.

752. A plaintiff, suing for possession of lands on the ground that they form part of a *khas mehal* bought by him from Government, must prove that they do in fact form part of it. 9 W. R. 259.

753. In a suit to recover land of which defendant had admittedly held adverse possession for upwards of 11 years, where plaintiff's cause of action was alleged to have arisen at the close of a contest between him and the Government which had claimed to resume the land, when the Collector recorded a proceeding that the plaintiff should recover possession of his land, defendant's case was that he knew nothing of that contest and had held possession for 27 years: Held that it lay upon the plaintiff to remove the statutory bar which defendant had set up, by showing that he, or some one under whom he claimed, had been in possession within 12 years next before the commencement of the suit. 15 W. R. 43.

754. Plaintiff alleged that she and her deceased husband's minor brother had, with his other three surviving brothers, held joint possession, but that these three had wrongfully sold the land to the other defendants, and she prayed for possession by reversal of the sale. The purchasers appeared and filed a written statement to the effect that the vendors had separated from their father in his life time, and that they (the purchasers) had been in succession to the vendors for more than 12 years in possession.

Held that the *onus* lay on the plaintiff, who would have to show not only that she represented one of the heirs of her husband's father, but also that the land in dispute was part of the estate left by the father at his death. 10 W. R. 436.

755. In a suit to recover possession of an *ousut* talook on the allegation of having been dispossessed by the purchaser of the Zemindaree

right: Held that defendant as the superior landlord having *prima facie* title, the *onus* lay on plaintiff to defeat that title by proving the grant of an intermediate tenure. 23 W. R. 432.

Where an auction-purchaser brought a suit to obtain possession of certain julkurs, which he alleged formed part of his Zemindary of S, the defendant being in possession thereof, and his possession having been confirmed in an Act IV case: Held, that the burden of proof rested on the plaintiff to show that the julkurs in dispute formed part of the assets of the Zemindary at the time of the perpetual settlement; and also that the plaintiff not having objected before the High Court to the Court of first instance having delegated the decision of the main point in the case to an Ameen, could not take that objection before the Judicial Com-
20 W. R. P. C. 44.

757. In a suit brought on the footing of a bundobust (from Government) under which plaintiff and his brothers, it was alleged, had been in possession of land of which they were subsequently dispossessed by defendant, and which they failed to recover in an action under Act XIV of 1859 S. 15, defendant pleaded acquisition by purchase from the father of the plaintiff. The Lower Appellate Court decided in favor of plaintiff on the ground that it was for defendant to show that the land in dispute was within the conveyances filed by him: Held that the decision was wrong in law, the *onus* being on plaintiff to prove his title. 20 W.

758. In a suit which was really one to recover the possession to which plaintiff was entitled, the plaintiff alleged that plaintiff had been in khas possession and had been dispossessed by defendant. The plaintiff having proved a *prima facie* tiltle, and defendant failing to prove any title to possession, the first Court decreed the suit. The Lower Appellate Court reversed the decree on the ground that plaintiff had not proved the allegation of khas possession or that of dispossession. Held that the Lower Appellate Court took too narrow a view of the plaintiff's case and decided the suit upon a wrong issue; for plaintiff's title having been admitted, he ought not to have been required to prove khas possession in order to recover the land from one who had no title to it. 20 W. R. 421.

759. Plaintiff having obtained a decree in a suit for possession found difficulty in executing it owing to judgment-debtor having taken every precaution to prevent identification of the land decreed. land-
this, the Court refused to throw the *onus* of showing the boundaries upon the debtor, as plaintiff might by timely action have prevented the confusion, and as the *onus* of proving his claim clearly belonged to plaintiff. 18 W. R. 527.

In a suit to prevent the defendants from obstructing the plaintiff in his enjoyment of the fruits of certain trees, which he claimed as heir of a person who purchased that right, the defendants denied the existence of the right, and alleged possession and enjoyment in themselves:—Held that the District Judge, in appeal, having found the pos-

and enjoyment to be in the defendants, upon the plaintiff the burden of proving his title to the trees or their produce. 4 B. H. R.

761. In a suit to establish plaintiff's title to and for possession of a jote which was admittedly the 'raj-barree jote' of defendant's ancestor, the real point in the case is, how such a jote came into the hands of the plaintiff, and the *onus* is on him to show that the defendant's ancestor or his heir relinquished the jote to the zemindar, and that the zemindar had authority to *put* the jote to the plaintiff. 18 W. R.

762. In a suit for possession, with mesne profits, on the ground that the lands claimed were allotted to plaintiff's share by a butwarra under Regulation XIX of 1814, where defendant, admitting the allegation urged that plaintiff had given up possession as soon as the butwarra was completed: Held that it was for plaintiff to prove that defendant had interfered with the possession awarded to him by the Collector. 16 W. R. 200.

763. Where a plaintiff sues to set aside a deed of mortgage executed by him, under which possession passed to the mortgagees, on the allegation that the consideration had not been received by him, the law of India (the English law being the same) casts upon him the burden of establishing good *prima facie* title to the relief which he seeks, and he must make out a clear and consistent case for setting aside his own deed. 12 W. R. P. C. 6.

764. In a suit to recover possession of certain lands upon the ground that they were granted as a jaghcer tenure by plaintiff's ancestor to one P and his lineal descendants, and that such descendant had failed: Held that it was necessary for plaintiff to prove the grant alleged in his plaint, without which no cause of action would have been shown: and as the tenure was created in the proper and usual manner, *i. e.* by a pottah and kabooleut, the latter would be in the possession of plaintiff's ancestors. As this was not produced, no secondary evidence given of it, and no foundation laid for giving such evidence, it was unnecessary to go further into plaintiff's
19 W. R. P. C. 140.

Where a survey proceeding, conducted in the presence of both declares lands to be included in the zemindary of a person, a plaintiff who sues such person to recover possession of the lands as included in his own zemindary, must prove by counter-evidence at what precise time, if ever, he or any one from whom he claims was in possession of the lands. 12 W. R. P. C. 6.

766. In a suit to recover possession of two parcels of land alleged to have been comprehended in one plot, on the ground that they had been held by plaintiff and defendant jointly, until by certain proceedings the was virtually deprived by the latter of the usufruct, defendan being that the parcels were divisible into two distinct plots, one held by

himself jointly, and the other

Held that it was on the plaintiff to prove that the disputed parcel was part of the land held jointly by him and the defendant. 12 W. R.

767. In a suit under section 230 Code of Civil Procedure, to recover a as part of plaintiff's share of pergunah, of certain fisheries she had been dispossessed by defendant, though they were part of a julkur mehal which had been left by a partition in the joint possession of all the share-holders, defendant avering that the fisheries in had been created since the partition. Held, that it lay with the to start her case by showing that the fisheries were a part of the julkur mehal held ijmaloe by the parties, and that it was specially necessary for her to prove *bona fide* possession. 12 W. R. 16.

768. Where a defendant in a bond-suit denies receipt of the consideration *in toto* the *onus* of proving the receipt thereof is on the plaintiff. Where the defendant denies receipt of the consideration in part, the *onus* is on the plaintiff to prove payment of the consideration to the extent of the sum not admitted by the defendant. 5 W. R. 203.

769. Where a plaintiff sues for a specific sum of money due on a balance of account, it is for him to start his case and show what sum is due on the account, and until he has done so, the defendant need not be called upon to rebut him. 12 W. R. 529.

770. In a suit to recover advances alleged to be due from a discharged gomasta, who pleaded, acquittances at the time of his discharge. Held that plaintiff was bound to prove the payments to, and the receipts from, the gomasta, and to put in original documents and not mere transcripts, even if the defendant had remained silent. 10 W. R. 422.

771. An estate was mortgaged with the stipulation that the interest of the mortgage-debt should be deducted out of the usufruct, and that if the profits fell short the mortgagor would make up the deficiency. After a time the mortgagor tendered the amount of the principal sum, and forcibly took possession of the property. The mortgagee sued to recover possession, and obtained a decree with wassilat.

Held, that plaintiff might have sued under Act XIV of 1859 S. 15; but that suing as he did the *onus* was on him to produce the accounts, and show that something was due to him as interest. 19 W. R. 429.

772. In a suit against an heir for debts of his ancestor, in the absence of special circumstances it lies upon the plaintiff in the first instance to give such evidence as would *prima facie* afford reasonable ground for an inference that assets had or ought to have come to the hands of the defendant. Plaintiff having laid this foundation for his case, it then lies upon the defendant to show that the amount of such assets is not sufficient to satisfy the plaintiff's claim, or that he was not entitled to be satisfied out of them, or that there were no assets, or that they had been disposed of in satisfaction of other claims. 3 M. H. R. 161.

773. In a suit by three brothers to recover an estate sold by their

two elder brothers as their guardians during their minority, without necessity and in collusion with the purchaser. Held that the onus on the plaintiffs to prove that the sale was fraudulent and collusive. R. S. N. 37.

774. In a suit for possession of land in virtue of a pattah ——— by eldest member of a joint Hindu family where the other members rate the claim on the ground that the lessor as one of a joint family could not give title to the whole of the land, the *onus* of proving the eldest brother's right to give such title is on plaintiff. 20 W. R. 342.

775. In a suit brought by a Hindu son, for himself and on behalf of three infant brothers, to set aside a sale of certain ancestral lands, which had been made by his father without his concurrence :—Held, that the *onus* of proving that the payment of the debts, on account of which the property was sold, was not a common family necessity, was properly laid by the District Judge upon the plaintiff. 2 B. H. R. 23.

776. In a suit by a member of a joint Hindu family to recover possession of a share of the ancestral property where limitation is pleaded, the *onus* is on the plaintiff to prove possession in some way within 12 years. 23 W. R. 381.

777. Where plaintiff, a member of a Hindu family, suing for a division of the family estate, admitted on the face of his plaint that he had taken possession of part of the family property, and for sixteen years lived separate, the *onus probandi* lies on him to show that the circumstances under which he became possessed of his portion of the property were consistent with his statement that the family remained undivided. 1 B. H. R. 43.

778. In a suit to recover property on the ground that it was purchased as the vendor's undivided share in the joint family property of three brothers, where defendants averred that it was the self-acquired property of the elder brother, who was not plaintiff's vendor,—Held, that the plaintiff was bound at least to show that the defendants constituted a joint family, and that they had enjoyed the property jointly at some period since its acquisition. The single fact of a family living joint, or in commensality is not enough to raise a presumption in law that property acquired by an individual member is joint. 10 W. R. 198.

779. A plaintiff suing for a share of certain joint property which claimed under a family arrangement said to have been reduced to writing as an ekrarnamah, and upon the happening of the necessary conditions, it was held that the rules with regard to the *onus* of proof which are applicable to a suit for a share of joint family property were not directly applicable and the plaintiff was bound to give some *prima facie* proof of her cause of action. 10 W. R. [illegible]

780. N, as reversionary heir of the former proprietor, and as now entitled to possession on the death of that proprietor's mother, sues for land in the possession of C, who obtained it by purchase at a sale in execution of a decree passed on a bond granted by O, which bond and

are alleged by N, to be fraudulent and collusive
Held, that the burden is on the plaintiff to prove that the decree
10 W. R. 173.

781. In a suit to recover certain property on the allegation that tiff's father had obtained it in gift from his wife (Lalun), and that it been in the possession of father and son more than 30 years, defendant having had his name recorded in Collectorate as heir to (Lalun). Held, with reference to the fact that there had been a tenancy of husband and wife together, that it was incumbent on plaintiff to prove that his session was possession on his own account, and not that of an agent. W. R. 513.

782. In a suit to recover the amount of excess payments of Government revenue made by the plaintiffs on account of their co-sharers to save the estate from sale (each proprietor holding a well defined, though not actually separated, share),—Held that the *onus* was on the plaintiffs prove their shares and the amount of revenue payable on them. W.

783. In a suit for rent by a share-holder where defendant contends that he is not bound to pay otherwise than by entirety to the person entitled to the whole rent, the *onus* is on plaintiff to show that he is entitled to sue for a fractional portion. 20 W. R. 76.

784. In a suit for property acquired from the proceeds of an alleged joint trade, the joint character of which is neither admitted nor proved, the *onus* lies in the first instance on the plaintiff who is not entitled under the circumstances to the ordinary presumption of Hindu law arising from the existence of joint family estate. 16 W. R. 163.

Where the plaintiff filed a suit to set aside a sale of land after had been unsuccessful in an application made under section 246 of the Civil Procedure Code to raise an attachment that had been laid on such land : Held that the *onus* lay on the plaintiff to prove his title, and not on the purchaser to prove that of the judgment-debtor. 5 B. H. R. A. C. J. 76.

786. In a suit to recover the balance of purchase-money alleged to have been due upon the sale of a decree, where plaintiff's case was that the consideration-money was not paid, but a *rooqua* given for it, payable when the mutation of names took place : Held, that the *onus* of proving non-payment was thrown upon plaintiff in consequence of the acknowledgments she had made of the receipt of the whole purchase-money, viz., an admission which was made, and recorded under Act XX of 1866, at the time when the deed was registered, and again an acknowledgment made in the petition presented to the Court which made the decree for mutation of names. 19 W. R. P. C. 149.

In a case of purchase after a decree, where the vendor is only a *lar*, and the vendor's husband (supposed to be the real owner) the deed and received the purchase-money (thereby making him-

party), the *onus* lies on the plaintiff to prove that he is *bona fide* purchaser for value, exercising due care and diligence. 1 W.

. In a suit by A to enforce a right of pre-emption which the to B was admitted, but it was alleged that B's deed of purchase had been ante-dated, the *onus* lay on A to prove that B's deed had been ante-dated; and on the failure of A to substantiate that fact and to prove that B. had taken possession within one year previous to institution of the suit, A was held barred by clause 1 section I Act XIV of 8 W. R.

789. In a suit to establish a right of pre-emption on the ground of ownership of contiguous land, no amount of mis-statement on the part of the defendant as to the ownership of such land can relieve plaintiff of the *onus* of proving his ownership. 9 W. R.

790. In a suit to establish a right of pre-emption to property ..... had been sold, in which plaintiff alleged that the actual value was different from that which was recited in the sale deed of sale between the defendants, the vendor and the vendee. Held, that it was for plaintiff to give some evidence in support of the allegation that the amount stated as the price by the defendant was wrong. 13 W. R. 435.

791. In a suit for an accretion, the *onus* is on the plaintiff to prove title. 6 W. R. 138.

The *onus* is on the plaintiff to prove his right to the particular fishery claimed by him. 11 W. R. 400.

793. In a suit to recover a share of a tank on the allegation of its being joint family property: Held that the mere fact of plaintiff's having at some previous time been in possession could be no proof of his title or shift the *onus* on defendant. 9 W. R. 461.

794. Where a plaintiff alleged that subsequent to his purchase of a tank, at a period specified, defendants had commenced to take water from it and had opened a channel for the discharge of the water: Held that the *onus* lay on plaintiff to prove the assertion on the part of the defendants of any new right. 11 W. R.

795. A party claiming to erect a bund in a natural flowing river so as entirely to cut off the water from another party, is bound to prove that he has acquired the legal right to do so by user. 15 W. R. 516.

796. In the suit for the removal of certain outlets made by defendant in an aqueduct, on the ground that plaintiff was entitled to the exclusive use of the water of the aqueduct, where defence set up was that the portion of the aqueduct to which the dispute related was where water flowed through the lands of the defendant's Zemindaree. Held it was for plaintiff to make good the title he alleged. 15 W. R. 83.

797. In a case where both parties severally claim the whole of a julkar, and the defendant is in possession of it under an Act IV award,

the *onus* lies on the plaintiff to prove his title to
tion of it, and on his furnishing any evidence of his title the Court will then go into the defendant's title, and decide which of the two parties has a prior title to the disputed julkur. 1 W. R. 215.

798. A, in execution of a decree against B, purchased B's, an estate, which share was said to be a certain quantity. Subsequently, A's representatives absorbed more land than belonged to B's; share, and in a suit brought to declare their rights in the estate, it was held that there should have been a clear finding as to what was the extent of the share originally purchased A, and that in determining the claim of A's representatives to the increase, the burden of a very distinct proof should be laid on them. W. R. S. N. 151.

799. In an action for malicious prosecution, it is for the plaintiff to prove the existence of malice and want of reasonable or probable cause, before the defendant can be called upon to show that he acted *bona fide*, and upon reasonable grounds, believing that the charge which he instituted was a valid one. 6 B. L. R. 371; 14 W. R. 426.

800. A plaintiff is bound to prove that he attained his majority in the date alleged by him in his plaint. 1 W. R.

801. The minor through the Court of Wards is at present in possession of Luchmee Pershad's estate. After a summary enquiry instituted and carried on by the Judge in the presence of both the widow and the present plaintiff, his legitimacy was established to the satisfaction of the Judge. The plaintiff now sues to set aside the orders passed on that summary enquiry. Held that he must prove his case, or at least adduce such evidence as shall *prima facie* raise in the mind of the Court some doubt as to the boy being really the son of Luchmee Pershad. 1 W. R. 236.

802. Where a plaintiff claims, not under any general right of inheritance, but expressly under a deed, he must prove that deed; no legal presumption as to the contents of the deed can arise from a consideration of what the party through whom he claims would have been entitled to by the law of inheritance had there been no such deed. 9 W. R. 385.

803. Where a plaintiff in a civil suit relies upon a *kobala*, which has been held by a Court of Small Causes to be *mala fide*, the *onus* lies upon him to prove that the deed was executed and that it represented a
and honest transaction between the parties. 10 W. R. 412.

804. In a suit on a bond it is for the plaintiff to prove the _____ of the debt, and this will be done sufficiently in the first instance by proof of the execution of the bond. It is for the defendant to prove in answer, if he can, that such amount is less than the sum sued for. 1 M. H. R. 447.

805. Where a deed of compromise clearly showed that the lands granted to the plaintiff were in exchange for the alleged *khood kasht* and

lands of her father: Held that the *onus* was not on the defendants to prove the fact of the exchange, but on the plaintiff to her case by some *prima facie* evidence. 17 W. R. 559.

806. The plaintiff, suing to recover money voluntarily paid by her to the defendant, alleged that the payment had been obtained by fraud. Hold that the *onus* was on the plaintiff to prove her allegations, and not on the defendant to prove them nature. 2 W. R. 2.

807. Where a defendant admits execution of a bond, but denies receipt of consideration, the *onus* of proving receipt is on the plaintiff.

Where a defendant admits having written a letter of assignment directing the plaintiff to pay certain sums of money due by the defendant to third parties named in the letter, the plaintiff is bound to prove such payment. 3 W. R. 111.

808. In a suit by a wife to recover property alleged to have to her from her husband under a kobalah the execution of which is undoubted, where the question is whether the transfer represented a or simply a paper transaction, it is not for the Court to presume but for the plaintiff to prove that there was substantial consideration. 21 W. R. 477.

809. In a suit by the heirs of a Mahomedan *pardanahin* lady to set aside a deed of sale executed by her, whilst leaving apart from her relations, in the house of the purchaser, who had occasionally acted as her *mooktar*: Held, that some evidence to impeach the deeds should be given by the plaintiffs before the *onus* of supporting it is thrown on the purchaser.

Wherein such a suit, the substantial relief prayed for is that the deeds should be set aside, the Court is not justified in substituting therefore a mere declaration of the plaintiff's title. 13 B. L. R. 427.

810. Where plaintiff alleges that an attachment subsists, and that therefore the mortgage under which defendant claims is invalid, is bound to prove his allegation, and the *onus* is not discharged by shewing that attachment was made some years previous to the alienation. 9 W. R. 332.

811. A decree-holder, driven by an order of the Court under section 246 of the Civil Procedure Code, made in the execution proceedings; to seek a remedy in a regular suit, sued to establish his right to certain property as being that of his judgment-debtor. The defendant, admitting that the property had been the judgment-debtor's alleged that it had passed to himself by conveyance. Plaintiff, admitting the fact of such a deed of sale, alleged that it was fraudulently executed in order to deprive him of his just rights. Held that plaintiff was bound to prove the fraud. 10 W. R. 321.

812. In a suit for the sale of certain property in satisfaction of a decree against a judgment-debtor (since deceased) where it was found that the judgment-debtor had made over the property to his wife in lieu of

dower and that she had transferred it to defendant: Held that *onus* was on the plaintiff. 10 W. R. 423.

813. In a suit for setting aside a summary order under the of section 246 Act VIII of 1859, on the allegation that the order was illegal, it is for plaintiff to prove its illegality. 11 W. R. 422.

814. In a suit against a purchaser to set aside a sale in execution of a decree on the ground of fraud, the *onus* lies upon the plaintiff to make that the sale was fraudulent. 10 W. R. 280.

In a suit to set aside a sale in execution as colorable false, and , the proof lies with the plaintiff. 15 W. R. 131.

816. A decree-holder in execution of his decree put up for certain property of his judgment-debtor, which was purchased by tiff ostensibly on his own account. Having reason, however, to that the purchase was *benamee* for the judgment-debtor, the holder again took out execution against the same property and advertized it for sale. Plaintiff intervened, but his objections were disallowed by the Court which found the judgment-debtor in *bona fide* possession on his own account; the property was then sold, and one of the defendants bought it. Plaintiff then sued to have the execution proceedings set aside, and to have it declared that the property had been brought on his own account and with his own money: Held that the *onus* of proof lay on the plaintiff. 11 W. R. 2[illegible]

817. In a suit to have a purchase made at an execution sale set aside on the ground that it was not *bona fide* but collusive, the burden of proof is upon the plaintiff, and it is not sufficient for him only to show circumstances which create a suspicion of the *bona fides* of the transaction. But in a suit for possession of land and for a declaration of plaintiff's title by virtue of purchase, it is not sufficient for him to produce a deed executed by a judgment-debtor: the plaintiff must free his case of such suspicions as may arise from his own position with reference to the vendor and from any such circumstance as the improbability of such a purchase having been made. 23 W. R. 141.

In a suit to establish title, unsuccessfuly asserted in an execution case, to property sold in satisfaction of a decree, where plaintiff claims under a gift and other titles originating with the judgment-debtor, it is not sufficient for plaintiff to make out a *prima facie* case leaving it to defendant to demonstrate fraud; plaintiff is bound to satisfy the Court of the genuine *bona fide* nature of the transfer. 11 W. R.

819. A having obtained a decree in a suit instituted on a bond purporting to have been executed by plaintiff's father and one D, proceeded to execute it by putting up for sale certain rights and interests of plaintiff as the legal representative of her father. Plaintiff sued on the allegation that the decree was fraudulent and collusive, and that she had with no notice of the proceedings taken in execution.

Held that it was for plaintiff to make out her case of fraud, it was not for defendant to show that the decree obtained from ... petent Court was not collusive, or that the notice had been actually served. 12 W. R. 148.

320. In a suit in which plaintiff prayed for the sale of property which l been mortgaged to him as security for a loan, under a zur-i-peshgee ijara lease, and of which he had been dispossessed by defendant under olor of a decree, it was held that as plaintiff had for a great many the usufruct of the land for the very purpose of repaying himself pal and interest of his loan, the burden was on him to show that was anything remaining due to him, and that the *onus* also was his prove that the ijarah gave him the right to sell the property upon ney. 20 W. R. [illegible]

821. To make out a title to property, it is not sufficient that the party from whom, or in whose name, the claimant alleges that he bought the property does not come forward to dispute the allegation. It is for the plaintiff to establish either the alleged benamee, or a conveyance from the alleged benameedar. 21 W. R. 19.

822. Suit for title-deeds. The defendant (plaintiff's maternal aunt) pleaded that she had purchased the property in the plaintiff's name, but that she was the party beneficially interested in it. Held that, if the plaintiff could show that he had held possession from the time of the purchase to the institution of the suit, the defendant must prove that she had herself purchased the property; otherwise the *onus* would be on the plaintiff to prove that the property was purchased from his own funds. 2 W. R. 31.

ONUS PROBANDI (On Purchaser).

823. A purchaser of another's rights and interests is bound to show what may be properly comprised under that denomination. 3 N. W. P. 188.

824. Held that the purchaser from the grand mother was bound to prove his title-deeds and the existence of legal necessity for the sale. 1 W. R. 347.

825. Where a party resists liability for a deed of sale executed by his am-mooktear, it is necessary for the purchaser claiming under that deed to show that the mooktear had authority either by virtue of a general or special power of attorney to execute that deed, and to bind his principal by executing that deed. 20 W. R. 119.

. Where a purchaser of immovable property deals with a aving a qualified power of dealing with that property, it lies upon aser to give some reasonable account of the need which sd, or was alleged to exist, for the sale. 2 M. H. R. 497.

827. The benamee system being one of the recognised institutions of

...country, a purchaser does not discharge himself of the *onus* ...es upon him, by looking only to the apparent title. Nor is the *onus* discharged by the mere fact of the name of the defendant's vendor being alone registered in the zemindar's books as the exclusive owner of the *putnee*, or of the vendor being only sued by the zemindar for the rent of the *putnee*. 18 W. R. 151.

828. The plaintiff must start his case by showing that he was not guilty of the offence charged, and it will then be upon the defendant to show that he made the imputation in good faith and for the public good. 11 W. R. ...

ONUS PROBANDI (On Ryot.)

829. In a suit for rent, if the ryot pleads payment, the *onus probandi* is on him. 1 W. R. 264.

830. Where a ryot holds lands of considerable extent under a Zemindar, and alleges that one or two plots occupied by him are held under a different title, the *onus* is on him to prove his allegation. 7 W. R. 535.

831. Where a ryot, on whom notice of enhancement has been served, sues under section 14 Act X of 1859, and fails to show that any excessive rate is demanded from him, or that he is not liable to pay the rent demanded, his suit ought to be dismissed: the Court ought not to go on to try defendant's case as if he was suing for enhancement. 11 W. R. 377.

ONUS PROBANDI (On Sebayet.)

832. Plaintiffs as sebayets suing to recover property must prove the title which gives them the right to recover just as it would if they were seeking to recover upon a secular, instead of a *quasi* religious, title. 10 W. R. 89.

ONUS PROBANDI (On Sons.)

833. Where the ancestor of a joint Hindu family purchased a property in the name of his youngest son, the *onus* was held to be on those claiming under the youngest son to prove that the property was his separate possession. W. R. S. N. 11.

ONUS PROBANDI (On Special Appeal.)

834. In order to support a contention that the judgment of the Lower Appellate Court is erroneous in law because the Judge has failed to give proper effect to the documentary evidence adduced, it is necessary for the special appellant to show not only that the evidence is ...ed to support certain conclusions, but that these conclusions alone from it. 20 W. R. ...

ONUS PROBANDI (On Tenant.)

In a case between two rival tenants claiming to hold under the

rd, where one of them admitted the tenancy of the other, but resignation by him of his tenancy and a lease to himself, the of proving the resignation was held to be on the former. W. R. S. N. 47.

ORIGINALS (Power to call for.]

836. A Court in which a suit may be pending has authority to send for the records from any other Court in which they may be, the ordinary rules of that other Court notwithstanding. 22 W. R. 355.

OUGHT NOT TO BE ACCEPTED.

837. "Ought not to be accepted" may have different meanings with reference to documentary evidence and to parol evidence. 6 W. R. 56.

OWNERSHIP (Acts of.)

838. In special appeal, the High Court held that evidence which did not allude to any specific acts of ownership, was not sufficient evidence to prove possession.

The finding of the fact of possession by the Lower Appellate Court upon such evidence reversed in special appeal. 2 B. L. R. App. 30.

839. A person's title or property in a tree may be proved by showing that the tree grows on his land, without proof of any acts of ownership over the tree. W. R. S. N. 223.

840. Where a widow has been allowed to exercise acts of ownership in respect of landed property belonging to her deceased husband incompatible with a mere right to maintenance from his estate, the *onus* of proof that the widow is entitled to nothing beyond a bare maintenance lies upon the party asserting this. 3 N. W. P. 12.

P.

PAPER-BOOKS.

841. Under the rules of the High Court, account-books which are not translated, and are not therefore a part of the paper-book, cannot be referred to in a trial without special leave. 19 W. R. 121.

PARTNERSHIP-BOOKS.

842. A & Co. and B & Co. entered into a joint adventure in opium A & Co. were to send money to various places to be handed to the agents, who were to buy and sell. They now claimed against B & Co. for money alleged to have been so sent after giving credit for sums
The proof was the arrival of the money at A & Co.'s places of
by entries in A & Co.'s books at each place, but there was no
yment to the agents save such entries As to remittances to
the other places, the only evidence was the books of A & Co. at the

to the

; and as to the former, although the evidence appeared manifi-
the case would not be remanded, as the appellants, independently
of these claims, had a balance against them. 4 B. L. R. P. C.

PAYMENT (Of Consideration-money).

of compromise, that the
was paid, is not of itself, according to the practice of the Native Courts in India, conclusive evidence of such payment, and may be rebutted by evidence of non-payment.

Where payment is denied and evidence of non-payment produced, the burthen of proof that the money was paid, lies on the debtor. 3 M. I. A. 347; 6 W. R. P. C. 55.

841. It is the practice of the Courts to receive evidence as to the actual payment of consideration-money, notwithstanding the sale deed may contain an admission of the receipt thereof.

It being generally, if not universally, the case, that the consideration-money is not paid at the time of the execution of the deed, gross injustic would be committed if such evidence were excluded. 2 N. W. P. 209.

PAYMENT (Of Decree).

845. It is no valid reason to disbelieve the evidence of a witness who swore that he had received the amount of a decree from plaintiff, when the money was paid by plaintiff's agent. 17 W. R. 502.

PAYMENT (Proof of).

846. A stipulation in a document that no other payments except payments endorsed on the document itself shall be admitted does not exclude of payment by other evidence 5 M. H. R. 451.

PETITION.

847. A petition put into Court by a judgment-debtor for time to pay the instalments due under a *kistbundee*, may be considered as evidence of a new contract formally entered into with the decree-holder and declared in Court. 23 W. R. 465.

PETITION (Collusive).

848. The Courts were unable to understand what the Judicial Commissioner meant by saying that a petition by which a widow transferred her rights to the plaintiff was a collusive document in the absence of proof of any attempt at fraud thereby against third parties; but as the petition upon which the plaintiff's right to bring this suit stood was unregistered: Held that it could not operate as a transfer of the widow's rights or be in evidence before any Court. 17 W. R. 218.

PETITION (Verified).

849. A verified petition is not evidence. 6 W. R. Mis. 43.

Where a party asks others to verify his signature to a petition, or to identify him as one of the petitioners, it amounts to an allegation on his part that he made the statements which appear in the petition, and is an effective evidence against the party making the request as if the petition were in fact filed. 21 W. R. [illegible]

PLAINT (In former suit).

The Lower Appellate Court was held to have committed an error in law in admitting the plaint filed in the previous suit as evidence against the present defendant, and also in relying on a decision of 1867, which did not determine any question of right as between the present plaintiff and the present defendant with reference to a julker in dispute. 17 W. R. 151.

POSSESSION (How to be proved).

852. A witness's statement that a party "is in possession" is no evidence of the fact. The question of possession is a mixed one of law and fact, and the evidence produced must give the various acts of ownership which go to constitute possession, so that the Court may arrive at its own conclusion. 9 W. R. 7?

Occasionally visiting and making use of a house is ample evidence of possession unless shown to have been done by the claimant in the capacity of a visitor and not in his own right. 11 W. R.

POSSESSION (Long.)

854. The plaintiff, the purchaser of a putnee under a sale for the payment of the rent of the putnee, sued the defendant, who was in possession of the land included in the *putnee*, for a right to increase the rent of the land and have a proper rent payable to him out of the land. He relied solely on three *issumnovisee* returns for three separate years in each of which returns the land said to be in possession of the *ghatwal*, the defendant's predecessor, was entered as 100 *beeghas*. The defendant adduced the evidence of two aged witnesses who stated that as long as they remembered the property the quantity of land in the tenure was 3,000 *beeghas*. The Lower Court dismissed the plaintiff's suit holding that the defendants had been in possession of [illegible]*ha*, and not 100 *beeghas* as alleged by plaintiff, and that the defendant had been in possession for more than 60 years. The High Court confirmed the decree of dismissal of plaintiff's suit: Held (in al[illegible] of the concurrent decisions of the Lower Courts) that the long uninterrupted possession of the *ghatwal* was clearly entitled to have greater weight than the *issumnovisee* returns. 16 W. R. P. C. [illegible]

POSSESSION (Of Ancestral Property).

855. Possession of ancestral property is good evidence of title a co-sharer, if shown to be evidence and to be inconsistent with the co [illegible]s having any right in the portion claimed. 14 W. R. 51.

POSSESSION (Of Collect

---. Possession of Collectorate Chellan by a Mooktear is *prima facie* proof of payment by him of a fine levied by the Collector in a butwarra 17 W. R. 502.

857. A pottah must not be presumed to be genuine merely from its ancient date. 1 W. R.

Pottahs cannot be assumed to be false, because contradicted by papers which are neither on the record nor are produced as exhibits. 8 W. R.

The production of a pottah in the presence of the party most interested in challenging its genuineness, is a fact legally of the utmost importance in determining its genuineness. 8 W. R. 395.

860. Where a tenant continues to hold land after his term, his pottah will be evidence of the rent at which he is holding over, in the absence of evidence to the effect that the rent was altered subsequently to its expiration. 22 W. R. 31.

861. Neither an alleged pottah nor *jumma-wasil-bakee* papers (when objected to by the other side) are receivable in evidence until some proof beyond mere conjecture is given of their genuineness and authenticity, and the hearsay evidence of three witnesses does not supply the defect. 1 W. R. 49.

862. Where a pottah had no attesting witnesses and was not capable of direct proof, it was held to have been established by the fact of having come from proper custody, corroborated by the exact identity of the grantor's signature with his admitted signature on other documents. 15 W. R. 493.

POWER OF ATTORNEY.

863. A power of attorney authorising the registration of a deed of mortgage, and recognizing a previous power to execute the deed of mortgage, is admissible as original evidence by way of admission of the previous deed. 2 W. R. 44.

PRACTICE (Of Privy Council).

864. It is not the practice of the Judicial Committe to advice the reversal of a decision of the Court below, merely on the effect of the evidence or the credit due to witnesses, as the Judges in India have better means of determining questions of fact than the Appellate Court. 9 M. I. A. 67.

PRESUMPTION.

865. The maxim *omnia presumuntur rite esse acta* cannot apply where it is plain that the greatest possible irregularities have occured. 23 W. R. 367.

866. The rule is to presume that a Lower Court has done its duty; neglect of duty cannot be assumed at the mere suggestion of an appellant. 11 W. R. [illegible]

867. The presumption of legitimacy where there has been opportunity for sexual intercourse is not irrebuttable. 1 M. H. R. 478.

868. An Appellate Court ought not to interfere with the judgment of the Lower Court until it is perfectly satisfied that the conclusion arrived at by the Court below is erroneous. It is a presumption of law that the judgment appealed against is right until the contrary is shown, and, when there is a doubt about it, the benefit of that doubt should be given by the Appellate Court to the respondent. 7 B. L. R. 621; 15 W. R. 228.

869. The presumption of English law as to encroachments made by a tenant during his tenancy upon the adjoining lands of his landlord is that the lands so encroached upon or added to the tenure and form part thereof for the benefit of the tenant so long as the original holding continues and afterwards for the benefit of the landlord, unless it clearly appeared by some act done at the time that the tenant made the encroachment for his own benefit. 22 W. R. 246.

870. There is no necessary presumption that property in the possession of a respectable female's husband, brother, and son respectively, is possession on her behalf, and not on heirs. 23 W. R. 264.

871. Where the Lower Appellate Court concluded
ness of a deed of sale to certain appellants, on a presumption arising from the existence of a possessory lease to other parties, and rested his decision entirely on such presumption, his decision was set aside in special appeal on the ground that the presumption did not necessarily arise. 19 W. R. 288.

872. Where a party claiming a mourosee tenure in the rights and interests of a lakherajdar sold at an execution-sale has collected rents for a considerable number of years, and the *jumma* payable to the lakherajdar has all that time remained unchanged, the mourosee right claimed may be presumed to exist, although claimant may not be able to produce his pottah to that effect. 19 W. R. 286.

873. Continuous payment of rent for about a hundred years was held to give rise to a presumption that the tenant held under a mourosi title. 7 B. L. R. 211.

874. If a particular mouzah has been held for many years as part of a particular mehal or Zamindaree, the fact of such holding affords a strong presumption that it is part of that mehal, even as against a purchaser at a sale for arrears of revenue of another mehal who claims that part of the mehal purchased by him, is not conclusive evidence against such auction-purchaser nor could any length of adverse holding prior to his purchase preclude the auction-purchaser from recovering it, if he could

it belonged to the

W. R. 207, 208

875. Plaintiff having objected unsuccessfully under Act VIII of 1859 section 246 to the sale of certain property sold in execution, brought a suit to establish his right to it as the self-acquired property of his father. The first Court found it to be the joint property of plaintiff and the judgment-debtor, whose rights and interests had been properly sold. This decision was reversed by the Lower Appellate Court, which raised two presumptions, *viz.*, first, that the inference to be drawn from the fact of the property having been acquired in the name of the plaintiff or of the plaintiff's father that the plaintiff, to the exclusion of the judgment-debtor, was the owner of the lands so acquired; and, secondly, because the older branch of the family separated from the younger branch, therefore the younger branch must be held to have separated as amongst themselves: Held, that both these presumptions were wrong in law. 18 W. R. 459

876. Their Lordships took the opportunity of repeating that the ordinary legal and reasonable presumptions of fact must not be lost sight of in the trial of Indian cases, nor an entire history thrown aside, because the evidence, or some of the evidence, of some of the witnesses was incredible or untrustworthy; and that evidence should receive its due weight, and not be rejected from a general distrust of native testimoney, nor perjury widely imputed without some grave grounds to support the imputation. 17 W. R. P. C. 1.

877. Lands which have never been occupied for cultivation, and which are of such a nature and description as that no one can be said to be in possession, may be presumed rightfully to belong to the parties with whom the title rests. 24 W. R. 410.

878. The Lower Court, having found as a fact that the tenure in dispute existed upon its present *jumma* in 1783, and had since paid the same amount of rent, and having inferred from this that a tenure existing in 1783 and never challenged until now may with good reason be taken to have existed some years before 1783 so as to be protected from enhancement: Held that the presumption was not unwarranted by the facts as found by the Lower Court, and could not be interfered withiu special appeal. W. R. S. N. 204.

879. In a suit to recover the value of crops alleged to have been carried off by the orders or at the instigation of A, who held a decree for a share of the Zemindary, where it was found that there had been long litigation between the parties, that A was determined in getting khas possession of the land, that she had refused to recognize the ryots whose crops had been carried off, that the perpetrators of the trespass were A's confidential servants employed in matters concerning her landed property, and that the act done was in furtherance of A's known wishes and for her benefit, it was held that A's knowledge and concurrence was properly presumed. 11 W. R. 101.

880. When it has been found that a deed has been duly executed and that a certain sum of money has passed in consideration of that deed, and when there is a recital in the deed of the fact that the balance of the consideration-money was paid previously to the execution of the deed, then there is something more than a presumption that the whole consideration has passed upon the deed. 8 W. R. 210.

881. In a suit to recover possession of certain lands in the bed of a river, which had changed its course, and to get rid of the effect of a Deputy Magistrate's order under section 318 of Criminal Procedure Code, it was found that plaintiffs had been in possession when the lands were surveyed some years previously as part of their village, and had continued in possession up to the year in which the criminal proceeding was held. Held, that the presumption raised by plaintiffs' continued and undisturbed possession was not rebutted by defendant's allegation that he was entitled to the julkar of the river. 11 W. R. 566.

882. An adversary is entitled to the benefit of such presumptions as naturally arise from a party's failure to prove his allegations, even though the *onus* was in the first instance on the former. 8 W. R. 395.

883. The mere fact that a member of a Mahomedan family in Oude was, for fiscal purposes, registered as sole owner of an estate, is not evidence of his exclusive right to the property. Such presumption from registration may be rebutted by evidence showing that the property was enjoyed in common by the family. 14 M. I. A. 401.

884. Although a purchase by a Mahomedan with his own money of an estate in the name of his son raises a presumption of the son's name being used *benami* for his father, proof that the father's object was to affect the ordinary rule of succession as from him to that property is sufficient to give as respects strangers a title to the son independent of and adverse to the father.

Where *bona fide* creditors of the ostensible owner of property are claimants on that property, the Court will require strict proof on the part of any one seeking to have it declared that he held it only *benami*. 5 B. L. R. 578.

885. An acknowledgment of the plaintiff in a former case, of realized a certain sum of money on account of rent for three years, may afford some presumption that the older items in the account were satisfied, and, if that presumption could not be rebutted, might be an answer to an action on the older demand. W. R. S. N. 97.

886. In a suit for enhancement where the defendants plead a holding at a uniform rate from the Permanent Settlement, the mere existence of a pottah and *kubooleut* of 1215 is not conclusive evidence that the rent was then changed or was then first fixed. 6 W. R. Act X. 26.

887. In a suit for enhancement, if the defendant pleads pottahs

... not inconsistent with the ...
and proves 20 years uniform payment of rent, the presumption will arise unless the opposite party prove a variance in the pottahs. 6 W. R. Act X. 50.

888. Although, in order to prove the payment of a uniform rate of rent for 20 years, it may not be necessary to prove an uninterrupted course of receipts, yet if the evidence in the case shows that, during the period for which receipts are not produced, the ryot was paying at a different rate of rent, that evidence must be taken into consideration with the receipts that are produced. 6 W. R. Act X. 42.

889. What is sufficient evidence to warrant a presumption that a tenure has been held at an uniform rate for 20 years, will depend upon the circumstances of each case. 9 W. R. 158.

890. Under circumstances raising a strong presumption against an alleged adoption, such adoption held not to have been made. 12 M. I. A. 350.

PROBABILITIES.

891. Weighing evidence with some indirect reference to probabilities is no error in law. 17 W. R. 473.

[illegible]. In this case which turned upon the validity of the bond on which plaintiff sued, the decision of the High Court in favour of defendant was reversed, as based upon the assumed probabilities of the case instead of the evidence before them, and in forgetfulness of the most startling improbability of all, *viz.* that the defendant should, if his case of fraud and forgery were true, have failed to attempt to substantiate it by his own testimony and that of his brother. 18 W. R. 120.

893. Where the Lower Appellate Court, merely upon the appearance of a document, discarded the evidence of witnesses who testified to the making and signing of it, the High Court reversed its decision on the ground that probabilities, which are useful as aids in considering the true value of direct evidence, can seldom be safely had recourse to alone for the purpose of entirely invalidating direct evidence. 21 W. R. 436.

894. Where a Judge whose judgments have been observed to be very careful, comes to a conclusion, on the weight of the evidence, as to a pure question of fact, the High Court would do wrong not to follow the principle laid down by the Privy Council, not to interfere in a judgment on facts, unless the conclusion be clearly shown to be a mistaken one.

In this country, where native evidence, as a general rule, is fallible it would be safe and proper to follow another principle laid down by the Privy Council, namely to look to the probabilities of the case. 11 W. R. [illegible]

PROCEEDINGS (In a case between other parties.)

895. A proceeding in an Act IV case between entirely different parties, and a map used on that occasion, are not evidence in this suit. 9 W. R. 91.

PROCEEDINGS (In former suit).

896. Where a plaintiff had been successful in both the Lower Courts and the decree which he had obtained was only reversed by the High Court, on the ground that he was not entitled to the particular relief asked for, without the finding of the Lower Appellate Court and the pleadings of the parties being displaced. Held that it was open to the plaintiff in a subsequent suit against the same defendant framed in a different way, to adduce the proceedings in the former suit as evidence for what they were worth. 24 W. R. 265.

PROCEEDINGS (Of Criminal Court.)

897. The proceedings in the Criminal Court are not evidence in the Civil Court. 14 W. R. 339.

898. A proceeding of a Criminal Court is not admissible as evidence: a Civil Court is bound to find the facts for itself. 9 W. R. 77.

PROCEEDINGS (Of Settlement Ameen.)

899. The proceedings of a Settlement Ameen cannot be taken as evidence against a person who was not a party in those proceedings. 8 W. R. 426.

PROCEEDINGS (Under Act IV of 1840).

900. Held (by Markby J.) that a Judge does not go further than his discretion in rejecting as evidence a proceeding under Act IV of 1840. 14 W. R. 493.

901. Proceedings under Act IV of 1840, to which both litigants have been parties, may be treated as evidence between them on the question of possession. 20 W. R. 420.

PROCEEDINGS (Under Act XL of 1858.)

902. Though proceedings under Act XL of 1858 and Act XXVII of 1860 are not conclusive evidence, they are some evidence in corroboration where they involve an admission on the opposite party. 18 W. R. 514.

PROCEEDINGS (Without Jurisdiction.)

The proceeding of a Court Ameen in a sub-division where he has no jurisdiction, cannot be a legal proceeding or legal evidence. 10 W. R. 151.

904 The Courts in India and Court of final appeal, require that where an instrument is executed by a purda woman, it must be clearly proved, that the party was a free agent and knew the nature and effect of the instrument she executed. 13 M. I. A. 419; 14 W. R. P. C. 7.

905. Where a conveyance by a purda woman is impeached, there ought to be clear evidence, not of the mere signature by the party, but that the secluded woman had the means of knowing what she was about. 17 W. R. 523.

906. The plaintiff sought to make two purda ladies liable on a document which he alleged had been executed by a third person as their agent. Held (reversing the decision of the High Court), strict proof of the agency must be given. 10 B. L. R. P. C. 295.

907. Where a purdanasheen lady, living apart from her relations and natural advisers, makes a deed in favor of a person who has on some occasions acted as her man of business, the strongest proof ought to be given by him that the transaction was a real and *bona fide* one, and was fully understood by the lady whose property is dealt with. 12 L. R. I. A. 193.

908. A Hindu *purdah* woman is entitled to receive in the Courts of this country that protection which the Court of Chancery in England always extends to the weak, ignorant, and infirm, and to those who, for any other reason, as specially likely to be imposed upon by the exertion of undue influence, which is presumed to have been exerted unless the contrary be shown. In all dealings, therefore, with persons so situated, it is incumbent on the party interested in upholding the transaction to show that its terms are fair and equitable; the most usual mode of discharging such *onus* being to show that the lady had good independent advice in the matter, and acted therein altogether at arm's length from the other contracting party. 22 W. R.

909. The Privy Council dissented from the conclusion come to by the High Court that any *prima facie* case had been made out by the plaintiff (respondent), and considered that the suit, being one brought against *purdah* woman upon a deed alleged to have been executed by them, wholly failed, inasmuch as there was no proof that the woman had ever signed the deed, or that it had been ever signed by any person authorized by them, and that Their Lordships, if they affirmed the judgment of the High Court, would be going against the whole course of cases that have been decided in India and by the Privy Council in respect of transactions to which *purdah* woman are parties. 17 W. R. P. C. 333.

R.

(Prevailing).

910. The mere fact of a particular rate of rent having been

two ryots not having a right of occupancy, is not enough to show that the rate so decreed was the rate prevailing in the neighbourhood. 11 W. R. 142.

RE-ADMISSION (Of Appeal).

911. A petition for the re-admission of an appeal must be accompanied by evidence in support of the allegations on which the petition is founded. 6 W. R. Mis. 43.

RECEIPT.

912. A party is perfectly competent to prove the payment of a debt or rent by the production of the receipt, and proof that it is the document which he received on paying the money; he is not bound to summon the parties who signed the receipts to prove their signatures, nor is his own evidence secondary evidence. 12 W. R. 35.

913. Though a receipt on the back of a bill of exchange or promissory note *prima facie* imports that the bill or note has been paid, yet the receipt is capable of being explained; and if it appears that the bill or note has not been paid, and that another bill or note was substituted for it, the Court will not be justified in concluding that the party who gave up the note in that way meant that the debt secured by the note was to be considered to have been paid. 11 W. R. 201.

914. In the absence of books and accounts or any other evidence, a suit for a receipt for goods cannot be converted into one for dissolution of partnership. 14 W. R. 47.

RECEIPT (Of Chowkeedar).

915. *Chowkeedar's* receipt and *Nazir's* reports are not evidence *per se* of the service of the notice of appeal and the like, but must be proved as any other documentary evidence. 3 W. R. Mis. F. B. 11.

RECEIPT (Of payment of Government Revenue).

916. The possession of receipts for Government revenue is no proof, or at least a very weak proof, of possession of property. 17 W. R. 490.

917. Receipts of payment of Government revenue are not sufficient evidence of title or possession. 3 W. R. [illegible]

RECEIPT (Of Rent).

918. The receipt of rent by a landlord is no confirmation by him of an alleged lease in perpetuity. W. R. S. N. 14.

919. Receipt signed by the landlord's agent, if shown to be authentic, is *prima facie* evidence of payment of rent, but not conclusive evidence. 22 W. R. [illegible]

920. The giving of receipts for rent, coupled with the fact of

of rent at the old rate, down to the present time, is evidence of of the tenure by the auction-purchaser and his successor. 7 W. R.

In a case involving the alternative question of fact whether land belonged to R or to C, neither the one nor the other of the opposite party venturing to state who his opponent was, and the testimony of the witnesses on this point being doubtful: Held, that R, who was in possession of the title-deeds and of the receipts of rent, ought to succeed, unless there was something on the record to countervail such strong evidence. 19 W. R. 162.

922. Receipt of rent is good evidence of possession; but it does not necessarily follow that a party in possession has been disturbed because he cannot prove that he has collected rent of a particular portion of the property. 20 W. R. 183.

923. A Judge is not bound to decide the genuineness of the receipts if he is satisfied that the rent at which *the land is held* has been charged within 20 years. The amount of rent paid is not conclusive evidence of the amount of rent at which land is held, but may be rebutted by showing that the actual rent is greater or less. 6 W. R. Act X. 83.

924. In a suit for enhancement of rent, where defendant filed receipts, with a written statement duly verified, as proving uniform payment of jumma, but was not examined as to the genuineness of the receipts filed: Held (by the Senior Judge whose opinion prevailed) that the receipts were not proved. Held (by Glover, J.) that there was legal evidence of uniform payment, and as the Lower Court believed the evidence, however weak, its decision could not be interfered with in special appeal. 10 W. R. 490.

925. Receipts of rent purporting to have been given by the former owners of a jote, are not admissible in evidence without proof as to the hand-writing of the parties who gave them, or some satisfactory account of the custody from which they came. 7 W. R. 15.

RECITAL (In Bond given by Hindu Widow).

A recital in a bond for money borrowed by a Hindu Widow, to the effect that the bond was given for the performance of her husband's *shraadh*, is no evidence of the fact in a suit against the heirs of the husband or in a suit to charge the estate, and no declaratory decree is necessary to show that the bond was not given for the purpose specified. 9 W. R. 285.

RECITAL (In Decree between other Parties).

927. A recital in a decree in a suit not between the parties to the present suit or those under whom they claim, cannot be evidence to bind the defendants in the present suit. 10 W. R. 477.

RECITAL (In Deed).

928. As it has been held by the Privy Council that, according to the practice in India; the recital in a deed of the payment of consideration-money is not conclusive evidence of such payment, a Judge was declared to have acted correctly in considering evidence on the question whether consideration so recited had passed or not. 10 W. R. 208.

RECITAL (In Deed of Mortgage).

929. A recital in a deed of mortgage granted by one of two undivided brothers to a third party, that a division had taken place between the mortgagor and his brother, is no evidence of separation as against the latter or his representatives. 1 B. H. R. 31.

RECITAL (In Judgment).

930. Where certain amounts of rent are recited in a judgment as proved to have been paid in certain years, such recital is evidence as between the parties to the suit. 10 W. R. 247.

RECITAL (Of Power of Attorney in Will).

931. The recital of a power of attorney in a will, affecting to transmit the authority conferred by it, is not sufficient evidence of the contents of such an instrument in the absence of proof of its loss or destruction. 1 M. I. A. 494.

RECORDS (Burning of).

932. The plaintiff claimed a right of pre-emption as *sufee shurikh*, or partner in the thing sold. The Court of first instance gave him a decree, on the ground of long possession as proprietor. The Lower Appellate Court reversed the decision, on the ground that the plaintiff's title depended on a deed of purchase, which it was admitted had been set aside in a former suit in 1855; and that the plaintiff had failed to show that the decision in that suit had been reversed. The plaintiff proved that he had preferred an appeal from that decision, and alleged that it had been overruled; but there was no proof of the result of the appeal, as the records of that suit had been burnt in the mutiny. Held, on appeal to the High Court, that, under the circumstances, proof of long possession as proprietor was sufficient. 4 B. L. R. App. 21.

RECORDS (From Government Office).

933. Where records from a Government Office are required as evidence, it is for the Court to send for them; but papers required from a Court of Wards, which is not a Government Office, must be obtained by the party who needs them by means of a summons on the proper officer. 15 W. R. [illegible]

RECORDS (Unauthenticated).

934. The Court declined to accept, as authenticated papers of the re-

cord, papers which bore no signature, no seal, and no other mark of authenticity. 8 W. R. 163.

REFUSAL (Of Defendant to give Evidence).

In a suit to recover possession brought by the Zemindar one who claimed to be the *dur-putneedar*, the defendant, though allowed an opportunity to give his evidence and displace the finding of the Lower Court that his *dur-putnee* lease was not a real but a nominal transaction, refused to do so, and notwithstanding that the *putneedar* and his alleged vendee who were called as witnesses for another purpose, had in some respects given evidence in support of the defendant's case, the Court nevertheless confirmed the finding of the Lower Court. 18 W. R. 45.

REGISTER (Quinquennial).

936. According to Regulation XLVIII of 1793 S. 14, no counterpart quinquennial registers in the native language are considered authentic unless attested by the Zillah Judge. 17 W. R. 400.

REGISTRATION (In Collectorate).

937. The mere fact of registration in a Collector's books is no evidence of title. 14 W. R. 50.

REGISTRY (In Government Books).

938. Where the name of a person or his ancestor has always been entered in the Government books, and it is found that he has always paid the Government assessment in respect of certain villages, though that may not be evidence of title, it is very strong evidence of possession. 11 W. R. P. C. 35.

RELEVANCY.

939. The Court has jurisdiction to take a written statement off the file, for irrelevancy, until it is "tendered," which is when it is produced at the hearing of the suit.

"Relevancy" is to be judged by what the defendant believed to be material to his case, and not whether it did in fact disclose a good defence to the action. 10 B. H. R. 425.

940. Where two documents were executed in the Island of Bombay, respectively, under date the 29th August 1851 and 4th August 1852, and did not appear to have been originally expressly intended to operate within any of the Zillahs subordinate to the Presidency of Bombay. Held that they did not come within the scope of Reg. XVIII of 1827. That Regulation, being an enactment imposing stamp duties upon the subject, must be strictly construed, and although the High Court believed that those documents were actually intended to operate, so far as the particular property in question in the suit was concerned in the Zillah of Tanna, the High Court declined to hold "expressly" to mean the same as "actually" as nothing appeared on the face of either of those

to show where the property mentioned in them was .....
A and B, two undivided Hindu brothers, conveyed to their mother, C, one-third share in the ancestral property of the family by a deed of sale, dated 29th August 1851. Subsequently, A sold his one-third share in the joint ancestral property to B by a deed dated the 4th August 1852. In a suit brought by a judgment-creditor of A in 1868 to recover A's half-share in the joint property from B and C, the plaintiff gave in evidence proceedings taken by A jointly with his brother B in 1856 against a third person, relating to the joint property, with a view to show that the two documents were illusory, and intended to s A's share from execution by his creditors: Held that such pro were important and relevant evidence, in order to test the *bo* with which A executed the two documents, as it was important to tain how A subsequently demeaned himself with regard to the property, his share or interest in which he purported to convey by those documents. 11 B. H. R. 129.

REMOVAL (From Office)

941. When the evidence is insufficient to convict a person of an offence in a criminal trial, he cannot be removed from office on the ground of that offence; if there are other circumstances in his conduct warranting his removal from office, they should be stated and proved. 3 W. R. 116.

REPORT (Of Ameen).

942. Report of Ameen may be partially adopted. 1 W. R. 93.

943. An Ameen's report is evidence without any specific documents corroborating his finding. 2 W. R. 278.

944. The report of a Civil Ameen and the deposition taken by him, are admissible as evidence under section 180 Act VIII of 1859. 8 W. R. 267.

945. Where an Ameen had been deputed by a Civil Court to enquire into a question of possession, his report and the evidence taken by him are admissible under section 180 Act VIII of 1859. 9 W. R. 601.

946. Where a Court Ameen is appointed a Commissioner under the Civil Procedure Code, his report is only evidence on the point to which the commission refers; any report he chooses to make on any other point as no legal evidence in the case. 14 W. R. 493.

947. A Civil Ameen's report, and the depositions of the parties and witnesses examined by him, must be considered, even though the Court exercised its discretion unwisely and wrongly in giving him too extensive powers. 9 W. R. 597.

948. The report of an Ameen upon a local investigation is ..idence to support a decree, if it is believed by the Court and e ed sufficient without further evidence to corroborate it. 6 W. R

949. The report of an Ameen as to a local enquiry upon a matter which no personal inspection on his part could decide, and in regard to which the depositions of parties acquainted with the place could afford proper information, was held to be in no way irregular simply by reason of his having examined witnesses on the spot. 11 W. R. 424.

950. Where local enquiry is ordered by a Lower Court and evidence is taken by an Ameen and a report made, the return made by the Ameen becomes legal evidence under section 180 Act VIII of 1859 which the Appellate Court is not justified in refusing to consider. 12 W. R. 136.

951. A Lower Appellate Court was held to have erred in law in taking an Ameen's report and map as its sole guide, and making them the sole basis and foundation of its decision to the total disregard of the other evidence on the record. 24 W. R. 338.

952. If a Lower Appellate Court finds an Ameen's report deficient in any point, it can send for that officer and examine him; but unless it sees reason to disbelieve his statements, or to differ from his conclusions as to the matter under investigation, it must take those conclusions into serious consideration, and, if it rejects them where they were accepted by the first Court, it ought to give reasons for differing from that Court.

But where the Lower Appellate Court finds as a fact that the Ameen's report is untrustworthy and his map wrong, the finding, cannot be interfered with by the High Court in special Appeal. 24 W. R. 342.

953. The report of an Ameen, under section 73 Act X of 1859 is receivable as evidence, and a decision can be legally based upon it. 1 N. W. P. 165.

954. An Ameen's report is by itself insufficient to prove the possession of a plaintiff on whom the *onus* of proving possession within 12 years of the date of suit has been cast by the defendant raising the plea of limitation. 8 W. R. 464.

955. An Ameen's report cannot be pronounced to be void *ab initio* because it is based on butwarrah and resumption proceeds which had been referred to him for comparison with the land in dispute. 19 W. R. 213.

It is not necessary that oral testimony should be taken in order to effect a measurement, or that an Ameen's report must have depositions attached to it to make it legal evidence. 7 W. R. 44.

957. Where an Ameen's map is received in evidence by consent, and admitted by both parties to be topographically correct, the Court is entitled to look at the Ameen's report as explanatory of the map. 17 W. R. 522.

In a suit for enhancement of rent when the defendant objected in his grounds of appeal that the rates of the village in which his land was situated were lower than the Pergunnah rates; Held that the Judge had no right to take the report of an Ameen who did not give credit to defendant's witnesses on account of something he heard in the

; but that he ought himself to have examined those witnesses. 12 W. R. 138.

959. Where an Ameen who had been deputed to make a local inquiry, took the depositions on oath of several witnesses on both sides, and afterwards for further satisfaction recorded the statements of certain persons whose religious prejudices stood in the way of their giving evidence on oath,—Held, that, his report and the original depositions on oath were receivable in evidence under section 180 of the Code of Civil Procedure. 10 W. R. 312.

960. The report of an Ameen in a proceeding to make a partition, which is a judicial proceeding under section 180 Act VIII of 1859, must be treated in the same way as the report of an Ameen in an ordinary suit. The report and depositions are to be taken as evidence in the suit and to form part of the record. The Court is not bound by the report, but ought to enquire further into the matter if there is any necessity for so doing, and to examine witnesses *bona fide* tendered for execution. 17. W. R. 270.

961. Held that the Ameen's enquiry ought not to have been ordered in this case where the question to be decided was one of disputed boundary which turned chiefly on possession before the date of suit, and that the Subordinate Judge would have been justified in disregarding the Ameen's report and trying the appeal on the recorded evidence. 17 W. R. 473.

REPORT (Of Commissioner.)

962. Although a Commissioner's report should have very great weight attached to it, it is not absolutely binding. 6 M. H. R. 36.

963. Where an order for a local investigation under section 140, Code of Civil Procedure, is not objected to by the opposite party at the time it is made, the Court is justified in receiving as evidence the report of the Commissioner and the depositions taken by him, being a part of the record. 15 W. R. 291.

REPORT (Of Deputy Collector.)

964. Unless there be very good ground for dissenting and differing from the reports made by Deputy Collector upon local investigations, the Courts even in India, and *a fortiori* the Courts in England, in dealing with boundary questions, ought to give great weight to them and to be guided by them. 17 W. R. P. C. 286.

REPORT (Of Moonsiff.)

965. A Moonsiff's report of a local investigation, when not shown to be substantially erroneous in its data or reasoning, should convey the greatest weight as evidence of the facts it sets forth. 3 W. R. 219.

REPORT (Of Mouzadar.)

The report of a Mouzadar, not being that of a person compe-

[illegible] within the meaning of section 180 Act VIII of 1859, to report upon matters in process of judicial decision, may be disregarded by a Civil Court. 13 W. R. 113.

REPORT (Of Nazir.)

967. The report of a Nazir deputed to enquire into the condition of the property in dispute under section 180 Act VIII of 1859, is not inadmissible because he was not an Ameen appointed under Act XII of 56. W. R. S. N. 171.

968. The report and map of a Nazir who is not examined in a case are no evidence whatever. 16 W. R. 4.

969. The report of a Nazir that summons has been served on a defendant is not legal proof of service. 6 W. R. Act X. 93.

REPORT (Of Officer appointed under Regulation I of 1814).

970. Reports of officers appointed under Regulation I of 1814 if received as evidence in the first Court, and not objected to in the Appellate Court may under certain circumstances, be accepted *quantum valeat*. 9 W. R. 86.

REPORT (Of Police officer.)

971. Police officer's report is evidence that certain defamatory words were spoken, but not of malicious intention. 11 W. R. 554.

REPORT (Of Record-keeper)

972. The report of a Record-keeper is not admissible in evidence. 17 W. R. 400.

REPORT (Of Sherishtadar.)

973. The report of a Sherishtadar is not, under section 180 of the Code of a Civil Procedure and in view of the fact that there was a [illegible]r attached to the Court, legal evidence. 8 W. R. 332.

974. The report of a Sherishtadar after local investigation cannot be legal evidence, unless it is shown that no Civil Court Ameen was available for the duty in the district. 12 W. R. 210.

REPORT (Of Special Commissioner.)

975. The report of a special Commissioner was held to be inadmissible as evidence, as it did not come within any provision of the Evidence Act which would make it admissible. 22 W. R. 232.

REPRESENTATION.

A party is not concluded by his own representations unless they have been acted upon by the opposite party. If treated merely as admissions not acted upon it may be shown by the party who [illegible] them that they were not true. 20 W. R. 223.

REPRESENTATIVE (In Interest).

977. The purchaser at a sale in execution of a decree was held to be "representative in interest" of the judgment-debtor within the meaning of the Evidence Act 1 of 1872 S. 21. 21 W. R. 148.

RETURN (Of Collectorate Peon).

978. A Collectorate peon's return of service of notice is not admissible as legal evidence. 15 W. R. 270.

RETURN (Of Nazir).

979. A return by the Nazir to the effect that the peon swears that a notice has been served, is insufficient in law to prove the service without the deposition, on oath, of the serving peon taken before a competent authority. 12 W. R. 366.

980. Held (following the ruling of a majority of a Bench of 3 Judges), that a Nazir's return is no legal evidence of service of notice. 10 W. R. 3.

981. On an application being made for execution of a decree, a *purwannah* was issued on the Nazir to serve notice under section 216 Code of Civil Procedure, and a return was made by the Nazir to the effect that the serving peon not finding the judgment-debtor at home affixed the notice on the Zemindary Cutcherry of the judgment-debtor. As this return was used as evidence in both the Courts below without any objection being made, the High Court (following a precedent which had regarded such return as *prima facie* evidence) would not admit of its being objected to in special appeal on the ground that it was not legal evidence. 19 W. R. 102.

REVENUE AWARD.

982. The fact of a person not having brought a regular suit to obtain possession of land in reversal of a revenue award within 3 years of its confirmation by the Revenue Commissioner, is not conclusive evidence of title. It can only be evidence of the date of possession at the time when it was prepared. 4 W. R. 56.

ROAD CESS PAPERS.

Under the Evidence Act section 13, road cess papers and a deed of sale are evidence *quantum valeat*. 23 W. R. 223.

ROAD CESS RETURN.

A road-cess return made by a share-holder under the schedule of Act X (B. C.) of 1871 is not admissible as evidence against another share-holder. 22 W. R. 192.

ROUGH NOTES.

notes taken down by an Assistant Collector of what

..... by witnesses whose depositions were not recorded, are not such as is required by law; and an opinion based on such evidence is without legal validity. 14 W. R. 269.

S.

SERVICE (Of Notice).

986. The mere service of a notice by an intermediate holder on certain of his ryots is no proof that he realized rents at the rates specified in such notice. 6 W. R. Act X. 41.

987. When a party applying to have his case revived, alleges that no notice was served upon him as the law requires, it is the duty of the Judge to examine, on oath, the officer by whom that service is reported to have been made, and not to be satisfied with the formal report of the Nazir. The neighbours also who signed the receipt given to the Nazir's Peadah should, on the petitioner depositing their subsistance allowance and travelling charges, be sent for and examined. 4 W. R. Mis. 5.

SETTLEMENT PAPERS.

988. Settlement papers prepared at the beginning of each year, and signed by the ryots setting forth the quantity of *nuqdee* lands to be held by, and the amount of rent to be paid by, each tenant during the years, are admissible in evidence, and do not require registration, the amount of rent therein agreed to be paid being under Rs. 100 and the term being for only one year. 17 W. R. 273.

989. In a suit for arrears of rent, it was held that settlement papers were only corroborative evidence, and that though introduced on the testimony of sworn witnesses, they were not sufficient legal evidence of the yearly rental. 9 W. R. 239.

SETTLEMENT PROCEEDINGS.

990. Entries duly made in settlement proceedings, with respect to matters therein properly recorded, are, as against cultivators, evidence of such matters, although such evidence may be rebutted by other more reliable proof, if it be procurable. 2 N. W. P. 394.

SIGNATURE.

991. On an enquiry whether a signature is genuine, the signature cannot be compared with a document not before the Court, or with one of which the authenticity is disputed. 1 M. H. R. 164.

SIGNATURE (Of Testator).

. To entitle the executor to a probate, the signature of the testator must be that of a conscious person, and not the result of mere mechanical movement of the hand. 21 W. R.

SIGNATURE (Proof of).

993. In a suit to recover monies unaccounted for, where defendants plead payments endorsed on documents, and the endorsements purport to have been signed by the plaintiffs, the formal and regular method of proof is to call on the plaintiffs to admit or deny their signatures, and then to call upon witnesses to state whether they saw the plaintiffs sign or could speak to the hand-writing or generally what took place. 23 W. R. P. C.

994. Where certain ryots swore that they got their pottahs from the of the person who professed to sign them, this was held under the Evidence Act section 73, as "proving to the satisfaction of the Court" that the signatures were those of the lessor. 21. W. R. 6.

SIGNATURE (Without Name).

995. A signature of a Rajah of the ancient Nadden family was held to be valid even though it did not contain the name of any particular individual. 8 W. R. 395.

SOLENAMAH.

996. A solenamah was considered admissible as evidence against plaintiff, because, although he was not a party to it, his maternal uncles who were the managers on behalf of his mother through whom he claims were parties, and certain boundaries therein laid down contradict the statement as to the boundaries now made by him. 17 W. R. 522.

STATEMENT.

997. If one party uses the statement of another against him, the whole of the statement must be put in evidence, but the Judge is not bound to believe the whole of it. For instance, if the Judge upon the evidence really believes that the payments credited in a plaintiff's books were made, although he disbelieves the entry as to the amount of the debits, there is nothing inequitable in his giving the defendant the benefit of the payment. The Judge is bound to look at the whole of the entries giving credit to such as he believes to be true, and discrediting those which he believes to be false. 11 W. R. 525.

STATEMENT (Of Ancestors).

998. In a suit to recover property claimed by plaintiffs as sebayets lately in possession, and wrongfully ousted therefrom, it was held that statements made by the ancestors of plaintiffs and defendants were receivable as evidence. 10 W. R. 89.

STATEMENT

999. Where defendant on examination makes statements which amount to nothing and are manifestly untrue, plaintiff cannot be bound by them, even though he had agreed to be bound by what defendant said. 11 W. R. 110.

A written statement put in by a defendant is not a of confession and avoidance, and the whole statement must be taken together. 9 W. R. F. B. 190.

1001. Where defendant's written statement is referred to as evidence in plaintiff's favor, the whole of it becomes evidence in the suit, and the Court can, in its discretion, attach thereto, or to any portion thereof so much value as seems to it fit. 9 W. R. 290.

1002. A written statement is not a pleading in confession and avoidance whereby a defendant is bound by the confession and compelled to prove the avoidance: if used as evidence against a defendant, the whole statement must be taken together. 9 W. R.

STATEMENT (Of Judge).

1003. A Judge's statement must be taken to be accurate until and substantial ground is given for supposing it to be an error. 10 W. R. 232.

1004. A Judge cannot give evidence in a case merely by making a statement of fact in his judgment. If he intends the Courts to act upon his statement, he is bound to make that statement in the same manner as any other witness. 7 W. R. 190.

TATEMENT (Of Parties).

1005. The statement of a party to a suit is admissible original evidence against him to prove the contents of a written instrument. 3 M. H. R. 158

1006. A statement made by a party is not *ipso-facto* conclusive against him, though it may be used against him and may be evidence more or less weighty, possible even conclusive, according to the circumstances of each case and the result come to by judicial investigation. 12 W. R. 156.

STATEMENT (Of Plaintiff).

1007. A plaintiff's statement on oath, as to the retransfer to himself of certain property which had been sold by him, when unrebutted by any other evidence, was considered some evidence of the fact alleged and was not allowed to be objected to in appeal. 8 W. R. 519.

STATEMENT (Of Respondent).

1008. A statement of the respondent is not evidence against the co-respondent. 18 W. R. P. C. 480.

STATEMENT (Oral).

1009. On the reason of the absence of certain documents being challenged, an oral statement of a pleader before a Court of Justice is not sufficient in law to satisfy the Judge, acting as a Judge of fact, that the

documents themselves were beyond the power of the parties who wished to use them as evidence. 10 W. R. 238.

STATEMENT (Under Act VIII of 1859).

1010. A statement under Act VIII of 1859 is not in the nature of confession and avoidance as in English pleading, where the confession is considered as an admission of the party and the avoidance has to be proved. The statement of one party, if used as evidence against him by the other, must be taken altogether and not in part. W. R. S. N. 27.

STATEMENT (Written).

A written statement is not legal evidence, although the same consequences may follow from it, if false, as from a false deposition. 12 W. R. 3

1012. The principle upon which the admissibility of a written statement is determined is whether it has been made under such circumstances as make it reasonable to suppose that it was done *bonâ fide* and that the allegations it contains are true. And if as a whole it is against the interest or the proprietary right of its author, such parts as are in his favour cannot be rejected. 22 W. R. 232.

1013. A written statement cannot be called for by an Appellate Court or read as evidence against any party to the suit save the person by whom it is made and those who are bound by admission made by him. 5 W. R. 51.

1014. Case in which the Lower Appellate Court was held justified in referring to a written statement which was not admissible in evidence. W. R. 145.

1015. Statements made in a verified written statements of a party are not admissible in evidence (Bayley J. Dubitante). 7 W. R. 493.

1016. A sued B on a bond, in which it was recited that B had received the amount. B in his written statement admitted execution, but stated that he had received the amount mentioned therein not under the bond, but on the pledge of certarin jewellery. Held, that on the admission of the execution of the bond, which contained the recital of payment, the *onus* was upon B to prove that payment has not been under the bond. 1 B. L. R. A. J. 92.

1017. In a case in which A sued on a *kobalah*, and B relied on a deed of gift from a third party C, who was the vendor of the former and the donor of the latter, the Lower Court was held to have committed an error in law in having looked into a written statement made by C subsequent to defendant's deed in a case to which B was no party, and in having taken for a standard a signature in a deed sought to be set aside. 9 W. R. 450.

1018. In a suit by A against B for recovery of ancestral jumma lands

in
his written statement that A's ancestor having relinquished
the zemindar had leased the same to him, B and he had been in
sion since. He also stated how A's ancestor relinquished, and that he, B,
had thereupon obtained a pottah. He denied that he had dispossessed.
Held, that B having admitted the possession of A's ancestor, it lay upon
B to prove this title.

(Per Macpherson J.)—The opinion of the Full Bench in Palin Behari Sen v. Watson, was that if a party makes a qualified statement, that statement cannot be used against him apart from the qualification; not that if a man makes a series of independent unqualified statements, those statements cannot be used against him. That case goes no further than to lay down that an unfair use is not to be made of a man's written statement, by trying to convert into an admission by him that which he never intended to be an admission. 1 B. L. R. A. J. 133.

SUNNUDS.

1019. The Lower Appellate Court was held to have done wrong in rejecting as inadmissible, because on plain paper and unattested, sunnuds which had been filed in a previous suit between the same parties and the authenticity of which had then been established and had never since been impeached; as also in rejecting receipts which had been similarly filed before and had not been impugned. 20 W. R. 304.

A CASE (In Appeal.)

A suit to recover money having been commenced against P and others, an attachment was applied for and certain goods supposed to be the defendant's attached by order of the Court. Two other persons coming forward and claiming the attached goods as their property, plaintiffs concluded them to be partners with the original defendants and made them also defendants. The Lower Court at the trial held that the proof of their partnership on the part of the plaintiffs failed. Held in appeal that the plaintiffs' case could not at this stage be suppleme nted by examining pa ties whom the plaintiffs did not think fit to call, or by books which they did not produce, in the Court below. 10 W. R. 402.

SURVEY.

1021. In a suit regarding a *chur* the survey having been made at a time when neither of the parties held any right in the land, and when both their villages belonged to the same proprietor, was held to be some evidence of possession at that time, not only of the julkur but of the right of property in the river; and possession under those circumstances to be some evidence of title. 17 W. R. 73.

AWARD.

1022. An award by the Superintendent of survey is not conclusive
[illegible] of a contested right, in a regular suit. 12 W. R. [illegible]

The mere fact of a survey award being given in favor of , without any proof that he got possession under it or was in po on before it, cannot be conclusive against all other testimony. 5 W. R. 229.

SURVEY MAPS.

1024. A survey map is not conclusive evidence of possession. 6 W. R. 267.

1025. Survey maps are not evidence of title in a dispute re a right of fishery. W. R. S. N. 120.

1026. A survey map sought to be set aside may be used for the purpose of testing the correctness of an Ameen's report. 5 W. R.

1027. Survey maps prepared under the authority of Gover are evidence of possession, and, therefore, also of title. 10 W. R. 343.

1028. A survey map, as well as a thak-map, is admissible as evidence. 24 W. R. 317.

1029. A survey map may be resorted to for assistance in consi ing the evidence of a thak map as to area and boundary. 20 W. R. 14.

1030. A survey map is a piece of evidence like other evidence in a case, and can be of no effect in determining the burden of proof. 22 W. R. 296.

1031. A survey map is not sufficient, in the absence of other satisfactory proof of title, or of long antecedent possession, to establish a plaintiff's right to the land, and to disturb the defendant's present pos- 2 W. R. F. B. 210.

1032. In a case involving a boundary dispute, a survey map, if conclusive evidence, is evidence of an important character which ought to be looked into and considered. 15 W. R. 3.

1033. A survey map and proceedings may in certain cases form evidence sufficient to prove title ; and it is beyond the province of the High Court in special appeal to lay down any rule as to what weight is to be attached to that evidence. 13 W. R. 50.

1034. The fact that a previous suit by a plaintiff to set aside a survey award was dismissed, does not render the survey map conclusive evidence against the same plaintiff in the present suit, or affect the right of the Court before which it is placed as evidence to come to its own conclusion from the result of local investigation, or from an examination of the map or other survey papers. 11 W. R. 46.

Under section 13 Act II of 1855, Government survey maps are evidence not only with regard to the physical features of the country depicted, but also with regard to the other circumstances which the offi-

make the maps are specially commissioned to
further than this they are not evidence as to rights of ownership
W. R.

SURVEY MAP (Pencil Memoranda on).

1030. Pencil memoranda on a Government survey map held to be as evidence. 10 W. R. 343.

SURVEY PROCEEDINGS.

1037. Survey proceedings, if made without reference to litigation then pending, are not only evidence, but are to be presumed to be correct, and it is beyond the functions of the High Court in special appeal to lay down any rule as to corroboration of such documents. 19 W. R. 202.

38. Survey proceedings are evidence of actual possession and
garded as correct so far as the appearance of the country is recorded thereon, but if questioned in time, are not conclusive on the question of title. 13 W. R. P. C. 7.

T.

TENANCY (Proof of).

1039. A mere admission by the defendant of plaintiff having purchased a jote (without proof of plaintiff's name being entered in the Zemindary Register, or of his having ever got possession of, or paid rent for, the jote) is insufficient to prove that he was ever in the position of defendant's tenant. 5 W. R. 156.

TESTIMONY (Of Person who has been convicted of criminal offence).

1040. The evidence of a person who has been punished for perjury, or of a person who has been convicted of a criminal offence, can hardly be entitled to the credit that would be given to the testimonev of a person against whom no such imputation can be brought. 2 N. W. P. 97.

TESTIMONY (Oral).

1041. Valid reasons should be given for rejecting oral testimony. 2 W. R. 278.

1042. In a suit claiming the exclusive right to open and shut a ..... or sluice, and to set aside the award of a Deputy Magistrate, the Court of first instance gave the plaintiff a decree ; but the Principal Sudder Ameen finding for several measurement and settlement papers that the subject of dispute was not a *kunna* or sluice, but a *pyne* or water-course, dismissed the case. Held, that the Principal Sudder Ameen ought to have given some opinion upon the oral evidence upon which every thing ..... ; and that he was wrong in relying upon a recital in a J

trokhul khuraj which was contrary to an entry in the original *khuraj*. 11 W. R. [illegible]

TESTIMONY (**Unopposed**).

1043. In a suit to recover damages caused by the defendants' plundering the house of the plaintiff, the Court of first instance passed, upon the evidence of two witnesses, a decree in favor of the plaintiff. On appeal by some of the defendants, the Judges of the Sudder Dewanny Adawlut of Agra held that the fact of plunder was not proved, and dismissed the suit as against all the defendants. Held by the Privy Council that as the defendants did not come forward to exculpate themselves by their own evidence, and as the evidence in support of the charge was unopposed, the decree of the Court of first instance could not be set aside. 3 B. L. R. P. C. 44.

THAKBUST MAP.

1044. A thakbust map, to which the defendant was not a party, is not admissible as evidence on behalf of the plaintiff. 20 W. R. 458.

THAKBUST PAPERS.

1045. Thakbuts papers are *prima facie* evidence against the proprietors of estates comprehended in them. 12 W. R. 90.

TIME (**Lapse of**).

1046. Where a considerable time has lapsed of enjoyment and apparent acquiescence, a purchaser, or one claiming through him, may be [illegible] from shewing any thing more than the fact of a sale made to him under some ostensible plea of necessity. 9 W. R. 350.

1047. When a plaintiff sues upon title-deeds as evidence of his claim, he is bound to file them with his plaint, or else have them ready to produce at the time of the first hearing : otherwise he is bound to show good cause for not having done so. 14 W. R. 96.

U.

UNIFORM RENT.

1048. The defendant is not bound to give specific proof of payment in each of the 20 years, but only such evidence as will satisfy the Judge that the rent has not been changed during 20 years. 1 W. R. 280.

1049. A trifling difference in the *jumma* will not necessarily affect the fact of uniform payment of rent.

Although receipts for rent are ordinarily the best evidence of uniform payment, yet uniform payment may be proved by satisfactory [illegible] other than receipts for rent. 7 W. R. 284.

V.

VAKEEL(Exclusion of—from witness-box).

1050. Section 21 Act II of 1855 does not warrant a vakeel's exclusion from the witness-box, though it may excuse his answering certain questions relating to communications between him and his clients. 15 W. R. 340.

VARIATION.

1051. In order to establish variation in a written contract, it must be distinctly pleaded and proved when and how the variation took place; the mere fact of a kubooleut not having been enforced in the most stringent manner does not take away from the lessor the right to enforce it. 21 W. R. 30.

1052. A plea of guilty in the Criminal Court may, but a verdict of conviction cannot, be considered in evidence in a civil case. 10 W. R. 50.

W.

WAIVER.

1053. Receipt of rent is not *per se* a waiver of every previous forfeiture; it is only evidence of a waiver. 18 W. R. 218.

WAJIB-OOL-URZ.

1054. A *wajib-ool-urz* is not a mere contract, it is a record of rights made by a public servant; and, therefore, without attestation or execution by the proprietors of the *mouzah*, it is entitled to weight as evidence of village custom. 2 N. W. P. 396.

WITNESSES.

1055. Witnesses are to be weighed, not numbered. 8 W. 267.

1056. The principle that a plaintiff is bound to produce the best evidence in his power was held not to justify a Judge in omitting to consider the weight and legal effect of the remaining witnesses, where plaintiff had failed to produce the most important witness. 14 W. R. 482.

1057. Every party to a suit is entitled to have all the witnesses whom he desires to call and is ready at the trial to produce heard by the Court, whatever opinion the Court may form by anticipation as to the probable value of the evidence when it shall be given. 8 W. R.

WITNESSES (Absconding).

On application being made under sections 168, and 159 Act VIII of 1859, the Court, if satisfied (as it is bound to satisfy itself)

that the witness has absconded, and cannot be brought before it, and also as to the materiality of the witness, ought not to refuse the application, unless it sees that the applicant has aided in or connived at the absconding of the witness, or has otherwise placed himself in such a position that it would be inequitable to grant it. 1 W. R. 26.

WITNESS (Adverse Testimony of).

A party who calls a witness to give testimony on his behalf (*e. g.*, to prove the execution of a document) is not necessarily bound by the evidence which that witness gives; but if such evidence is at variance with the truth of his case (*e. g.*, if the witness swears that the document was not executed and has the means of knowing the fact) it throws such a suspicion upon the case as to render the clearest testimony necessary before its truth can be established. 10 W. R. 469.

WITNESS (Application for Summons to).

1060. If a party applies for summons to witnesses so late that he cannot bring the witnesses on the day of hearing, it still remains in the discretion of the Court to decide whether or no the case should be adjourned.

A Moonsiff is bound under the Procedure Code to issue summons to witnesses when asked for. 24 W. R. 290.

WITNESS (Attendance of).

1061. No reasonable application to compel the attendance of important witnesses should be rejected without good and sufficient cause. W. R. Act X. 150.

1062. A Civil Court has no power to bind witnesseas by recognizances to attend to give evidence on a future day.

A verbal order of the Court to witnesses requiring them to attend on a future day would not justify the issuing of a warrant for the apprehension of such witnesses in case they failed to attend in obedience to such verbal order. 5 M. H. R. 132.

1063. When witnesses do not appear after service of summons, it is the duty of the party requiring their evidence, and not of the Court, to move for further measures to be taken to secure their attendance; and when a commision is issued for the examination of witnesses; the Court must be moved to wait for the return. 11 W. R. [illegible]

1064. A Court acts illegally in directing a party, without cause to re-issue summons for the attendance of his witnesses, instead of enforcing their attendance by attachment and fine when the party requiring their evidence, has done every thing in his power by issue of summ[illegible] and then by deposing *tulubanah*, &c., as required by law, for issue of of attachment. 3 W. R. 22.

1065. Where an attesting witness is unable to write and either makes or has his name written for him in a deed, the satisfactory or style of execution of the attestation cannot invalidate the W. R. S. N. 187.

WITNESS (Claim of—to privilege from Arrest.)

1066. Where a witness was arrested in execution of a decree, and the under which the arrest had taken place shewed the absence of a *bona fide* belief on his part that his attendance at Court was re- for the purpose of giving evidence in the case in which he had en subpœnaed, the Court refused to allow his claim to privilege from arrest. 14 B. L. R. App. 13.

WITNESS (Contradiction of—on collateral questions).

1067. The rule limiting the right to call evidence to contradict on collateral questions excludes all evidence of facts which are incap- e of affording any reasonable presumption or inference as to the prin- cipal matter in dispute ; the test being whether the fact is one which the party proposing to contradict would have been allowed himself to in evidence. 6 B. H. R. O. J.

WITNESS (Credibility of).

1068. The credibility of witnesses is a matter altogether for the Court of first instance and the Court which hears a regular appeal ; and if these Courts are satisfied that the witnesses are not to be believed, there de- cision cannot be set aside by the High Court, even though upon a gene- ral view of the case it should think that if it had tried the case origi- nally, if might have come to a different conclusion. 10 W. R. 365.

Where credit has been given to witnesses by the Court of first before which they have been examined, the Appellate Court is not at liberty to say that it disbelieves them without stating . 14 W. R. 58.

1070. The circumstance of a witness being a servant or dependent of the plaintiff, does not of itself disentitle him to credit. 14 W. R. 23.

1071. A Judge was held to have done wrong in throwing out the evi- dence of witnesses tendered by the defendant in a civil action merely because they had been found untrustworthy when examined with refer- ence to a charge of breach of trust against the same defendant in a cri- minal case. 19 W. R. 226.

1072. Where two witnesses identified some of as having been present at the plunder, and these defendants did not think fit to avail themselves of the opportunity they had of exculpating themselves by their own evidence from the charge against it was held that their reluctance to give evidence

in relying on the unopposed testimony of the two witnesses. 12 R. W. P.

1073. Where witnesses who were not merely giving an opinion upon an isolated fact in the cause, but came into Court to prove the whole case made by the plaintiffs, and that a very special case, are shown have come to prove a case false in its material features, much reliance cannot be placed on their evidence as to any particular questions in the cause. 18 W. R. P. C. 523.

1074. The Privy Council referring to the generality of the Principal Sudder Ameen's observations as to certain witnesses having given evidence in other cases, observed that, though it was a legitimate object to a man's credit that he was a professional witness, yet to state generally and generally that a witness had given evidence in other cases became unworthy of credit, could only tend to increase the reluctance of respectable persons to come into Court, which was one of the social evils of India. 18 W. R. P. C.

1075. For the Lower Appellate Court to discredit witnesses merely for general reasons not affecting the particular credit of any individual deposition, is to commit an error of law, which can be the subject of a special appeal. 24 W. R. 251.

WITNESS (Duty of Judge as to).

1076. A Judge should see that the evidence of witnesses actually before him is properly taken and thoroughly sifted. 5 W. R. 34.

1077. It is not right for the lower Court to select five out of twenty witnesses tendered for examination. It is the bounden duty of the Judge to receive all the evidence tendered, unless the object of summoning a large number of witnesses clearly appears to be to impede the adjudication of the case, or otherwise to obstruct the ends of justice. 6 B. L. R. App. 10.

WITNESS (Enimity between one party and his opponent's).

1078. A Judge cannot refuse to rely upon the evidence of witnesses produced by one party, merely because the other party says from his hand that he and the witnesses are not on good terms. 17 W. R.

WITNESS (Evidence of one).

1079. The evidence of one witness, if believed, is sufficient according to the law of this country to establish any fact to which the [illegible] 10 W. R. 236.

The evidence of one witness, if reliable, is sufficient to prove any fact. 11 W. [illegible]

1081. There is no law which prevents a Court from finding a fact, not amounting to high treason or any other offence

laid down in the Evidence Act, even on the testimony of a single witness, if believed by the Court. 18 W. R. 341.

WITNESS (Examination of.)

1082. As a general rule all the witnesses, brought forward by a party ought to be examined. But when an objection is made in special appeal that the Judge below has omitted to examine certain witnesses, it ought to be shown that the evidence of those witnesses would have been material to the case. 6 W. R. 324.

1083. A Court ought not to reject any witnesses in attendance whom the parties wish to call. 6 W. R. Act X. 83.

1084. It is not the business of a Court to determine what witnesses shall be examined. The parties must select their own witnesses and call upon the Court to examine such of them as they may offer for examination; and it is their own fault if they do not take the necessary steps to have the witnesses examined or to compell them to be present for examination at the proper time. 6 W. R. 231, 232.

The plaintiff not having shown any *bona fide* intention to examine as witnesses two of the parties to the suit, and not having complained of the refusal of the Court below to add them to the list of witnesses until the arguments on the appeal were concluded and decision was about to be given, the High Court declined to allow the plaintiff to put in fresh evidence at such a stage of the proceedings. 6 W. R. 213.

1086. If the Court, when specially prayed to take the evidence of a witness, refuses without good reason to do so, the party calling the witness has ground for complaint. But the Court is not bound to examine a person as a witness merely because he has been summoned and in attendance. 2 W. R. 106.

1087. A lower Court was held to be justified in rejecting a prayer by a plaintiff for the examination of witnesses after his case had been closed and defendant's case had almost come to a termination. 14 W. R. 493.

1088. A party to a suit is not bound to go into the enemy's camp examine witnesses who come therefrom. 14 W. R. 467

WITNESS (Expenses of).

1089. Where there was no proof that a defaulting witness's expenses were not tendered to him by the party at whose instance he was summoned, the Court on appeal declined to order that witness's evidence to be taken or to take it themselves. 18 W. R. 17.

People of rank and wealth, when summoned as witnesses to a distance from their place of residence, are entitled to travelling and other expenses suitable to their circumstances. 19. W. R. 73.

WITNESS (Further).

1091. It is in the discretion of a Court of first instance, after the

plaintiff's case is closed, to allow him to call further witnesses. There is no right of special appeal upon that point. 12 W. R. 455.

1092. Where the first Court declared itself to be satisfied with the evidence of one witness and did not think it necessary to examine further witnesses whom the plaintiff addnced, it was held that if the Lower Appellate Court was not satisfied with the evidence of that one witness, it should have given plaintiff an opportunity of examining the other witnesses. 20 W. R. 203.

WITNESS (Present at the service of summons).

1093. The witnesses present at the service of a summons cannot be termed *secondary*, but are the best evidence of the service of
W. R. S. N. 31.

WITNESS (Proclamation against absent).

1094. A Court is not bound to issue a proclamation
witnesses in a case where it was not satisfied that the witnesses material or that they had really abscouded to avoid attendance. 6. W. R.

WITNESS (Recusant).

1095. A Court should not refuse, in the application of a party, to compel the attendance of his recusant witnesses, being material
by attaching their property. 3 W. R. 97.

WITNESS (Re-Examination of).

1096. A re-examination of witnesses and taking a fresh evidence held not necessary in the present suit, the record of the former suit in which the same point was at issue between the same parties having, by consent of parties, become the record in the present suit. 1 W. R. 310.

1097. Five suits having been brought to recover a balance of accounts from defendants, who were alleged to be partners of a trading concern and as such liable, certain witnesses were examined in four o the cases in which the plaintiff in one of the suits was not a party, and at his request the evidence taken in those cases was allowed to be used as evidence in his case and then the witnesses were discharged. Two days after this he applied to have the witnesses re-examined, giving no son for his application, which was refused : Held that the refusal s justified in the absence of any new reason for the re-examination. W. R.

WITNESS (Refusal to examine).

1098. A Lower Appellate Court does right in refusing to summon witnesses whom the first Court was neither asked to hear, nor refused to hear. 11 W. R. 289.

1099. The fact of a witness not having been named in the plaintiff's

list of witnesses, is no ground for refusing to examine him when duced. 12 W. R.

If a defendant's case is not closed, he has a right to have his ...ses summoned and to get an opportunity of producing them if he can do so in time. Where such right was refused to a defendant by the first Court, and his objection on that score was not noticed by the Lower Appellate Court, the High Court, in special appeal, remanded the case for a fresh hearing. 22 W. R. 2[illegible]

1101. In a suit for possession of zemindary and of other estates claimed as son and heir of the deceased zemindar, the defendants denied the title of the plaintiff, alleging, that he was a spurious and suppositious child, and tendered fifty eight witnesses to prove that fact: the Zillah Court having taken the depositions of thirty of these witnesses, refused to permit the remaining twenty-eight to be examined, on the ground, that being to prove the facts deposed to by those already examined, it was unnecessary to take their depositions, and, ultimately, decided in favour of the plaintiff: the defendants appealed to the Sudder Court which refused to examine the witnesses rejected by the Zillah, and affirmed the decree of the Court. On appeal to Her Majesty in Council the Judicial Committee remitted the case back to the Sudder Court, being of opinion, that the refusal by that Court to admit the examination of the witnesses tendered, was irregular and that no decision could come to upon the merits under such circumstances. 2 M. I. A. 424.

(Residing beyond the British Territories).

1102. Where the application of a party to a suit to have the evidence of witnesses, residing beyond the British territories, taken under a commission, failed owing to circumstances beyond his control, a subseq application to have other witnesses examined within the British ritories ought to have been complied with. 8 W. R. 448.

WITNESS (Secondary).

1103. A person who swears that he was present at the execution of an instrument, is not a secondary witness merely because he was not a subscribing witness. 18 W. R. 245.

WITNESS (Subscribing).

1104. In a suit for possession the fact of plaintiff having been a subscribing witness to a pottah which is set up by the defendant is not conclusive against the former. 14 W. R. 293.

WITNESS (Suit for damages

1105. Witnesses cannot be sued for damages in respect of evidence given by them in a judicial proceeding. If their evidence be false, they could be proceeded against by an indictment for perjury. 11 B. L. R. P. C. 321.

WITNESS (To Deed).

1106. Even where the witnesses to a deed of sale are alive, their testimony is not the only evidence by which it can be established. It may be established by any other evidence. 23 W. R. 293.

1107. The fact of a party putting his name as a witness to his brother's signature to a deed conveying the whole of certain property was held to be evidence against such party either that the whole property did belong to his brother or that he was acquiescing in his brother's act of selling the whole. 10 W. R. [illegible]

WITNESS (To Document).

1108. The Evidence Act does not require the writer of a document to be examined as a witness; nor does section 67 of that Act require the subscribing witnesses to a document to be produced. 21 W. R. 429.